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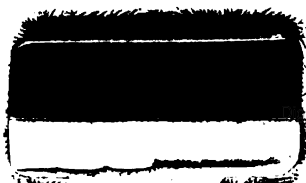
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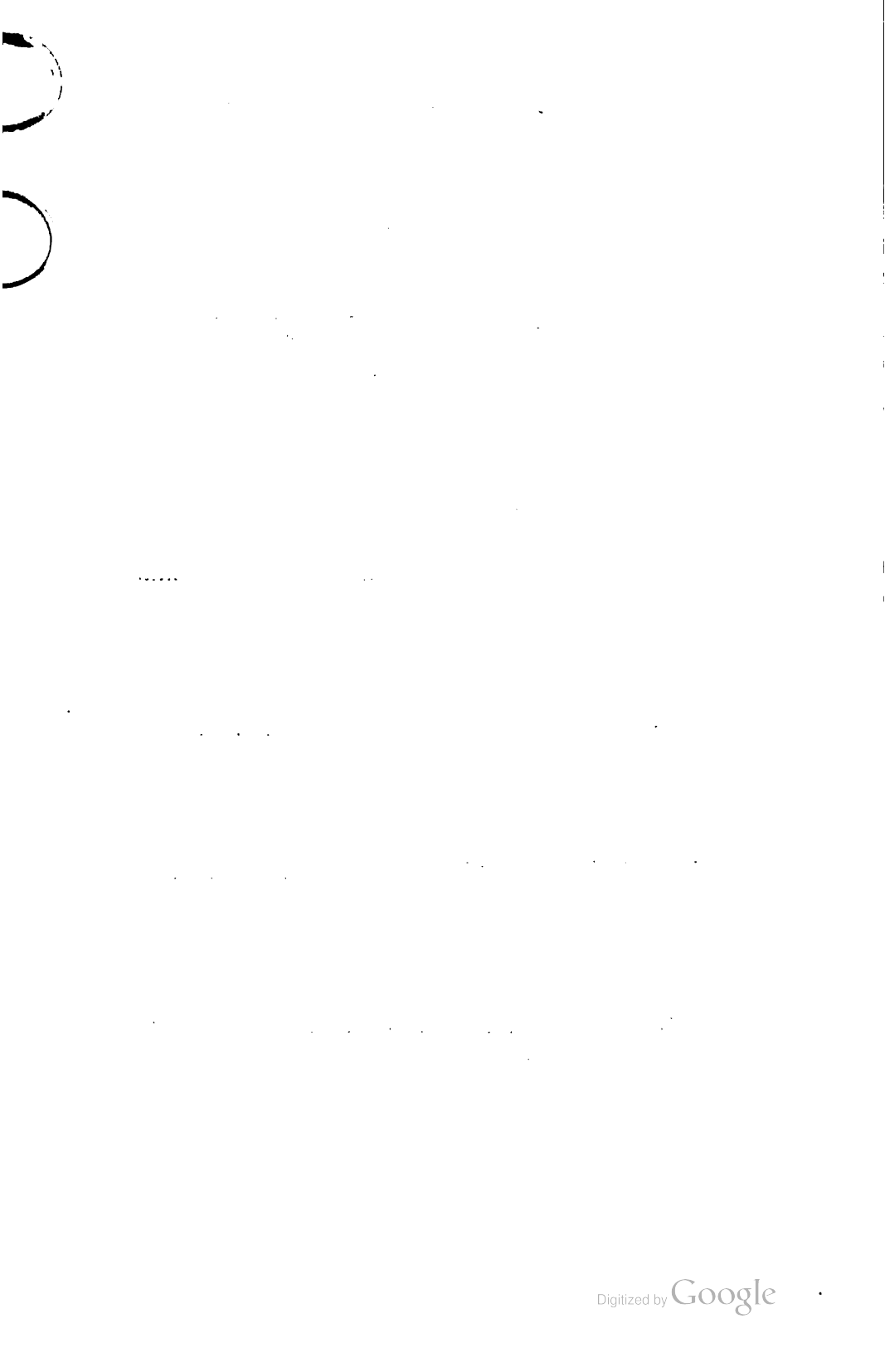
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American Telephone and Telegraph Company  
Bureau of Commission Research  
Legal Department  
15 Dey Street, New York City

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## COMMISSION LEAFLET No. 14

February 1, 1913.

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### Recent Commission Orders, Rulings and Decisions from the following States:

California	New Jersey
Georgia	New York
Kansas	Ohio
Maryland	Oklahoma
Nebraska	Wisconsin

the  
Interstate Commerce Commission  
and  
Nova Scotia and Ontario

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**NOTE:** This Department is prepared to furnish Associated Companies with information concerning the activities of all permanent supervising commissions including municipal commissions, state commissions, the Interstate Commerce Commission, and the Dominion and Provincial commissions of Canada.





## PART I.

### COMMISSION ORDERS, RULINGS AND DECISIONS DIRECTLY AFFECTING TELEPHONE AND TELE- GRAPH COMPANIES.

#### CALIFORNIA.

##### Railroad Commission.

REGULATIONS GOVERNING CLEARANCES AND CONSTRUCTION AT  
CROSSINGS OF RAILROADS, STREET RAILROADS, TELEGRAPH,  
TELEPHONE, SIGNAL, TROLLEY AND POWER LINES, WITH  
EACH OTHER AND WITH STREETS AND PUBLIC HIGHWAYS;  
ALSO OTHER OVERHEAD AND SIDE CLEARANCES OF RAIL-  
ROADS, STREET RAILROADS AND WIRE LINES.

##### General Order No. 26.

*Approved December 14, 1912. Effective January 1, 1913.*

It is hereby ordered by the Railroad Commission of the State of California, that the minimum clearances and character of construction hereinafter prescribed for crossings of railroads, street railroads, telegraph, telephone, signal, trolley and power lines with each other and with streets and public highways, and also other overhead and side clearances of railroads, street railroads and wire lines, shall hereafter be observed in this State unless otherwise authorized or directed by this Commission.

#### CLEARANCES.

##### 1. Railroads and Street Railroads.

- a.* When railroads, street railroads, streets or public highways cross above railroads, or street railroads which transport or propose to transport standard freight cars, a minimum overhead clearance above the top of rails shall be provided of *22 feet*. When such crossings are above street railroads which do not transport or propose to transport standard freight cars, such minimum clearance shall be *19 feet*; provided, that when such street railroads are on streets or public highways, such minimum clearance shall be *14 feet*.

- b. When telegraph, telephone or signal lines, or power lines of not exceeding 600 volts, cross above railroads or street railroads, a minimum clearance of *25 feet* shall be provided, except that the clearance above trolley wires and trolley feeders hereinafter specified (section 1-d) shall in all cases be observed.
- c. When power lines, other than trolley wires and trolley feeders, which transmit power at from 600 to 15,000 volts, cross above railroads or street railroads, the minimum clearance shall be *28 feet*. When such lines transmit power in excess of 15,000 volts, the minimum clearance shall be *34 feet*.

NOTE.—Provided that this minimum clearance of 34 feet shall be sufficient that under no circumstances can said lines of voltage higher than 15,000 volts, in case of breakage thereof or otherwise, come in contact with lines of less than 15,000 volts or fall within a distance of 10 feet from the surface of any street or public highway. The clearance of 34 feet is prescribed strictly as a minimum and in all cases when this minimum is not sufficient to comply with the provisions of the act of the legislature entitled, "An act regulating the placing, erection, use and maintenance of electric poles, wires, cables and appliances, and providing the punishment for the violation thereof," approved April 22, 1911, the provisions of this act shall take precedence over this order.

- d. When trolley wires or trolley feeders cross above railroads or street railroads, a minimum overhead clearance shall be provided of *22 feet*, or otherwise as specified in section 5 of this order.
- e. The minimum overhead clearance above the rails of railroads, and street railroads which transport or propose to transport standard freight cars, for bridges, tunnels and other overhead structures, shall be *22 feet*.
- f. The minimum side clearance on each side of the center line of railroads and street railroads, for tunnels and bridges, shall be *7½ feet*; for water stations, fuel stations, pole lines and all other side structures, such clearances shall be *8 feet*, except in case of double track electric railroads with center pole construction, when such minimum clearance shall be *7½ feet*. For narrow gauge railroads and street railroads, the

minimum clearance between the side of the widest car and any side structure shall be *30 inches*.

- g.* The minimum clearance between the center line of yard and industrial tracks of standard gauge railroads and street railroads, and the sides—or nearest projection—of buildings and structures, including platforms of height greater than 4 feet above the top of rail, shall be *8½ feet*. For platforms 4 feet or less and exceeding 1 foot in height, such minimum clearance shall be *6½ feet*. For platforms less than 1 foot in height, such minimum clearance shall be *4½ feet*. For narrow gauge railroads and street railroads, the minimum clearance between the side of the widest car and any structure shall be in the first case given above *42 inches*, in the second case *18 inches*, and in the third case—even with the side of the car.
  - h.* The minimum distance between the center lines of parallel tracks of STANDARD GAUGE RAILROADS, measured at right angles thereto, shall be *13 feet*, except that for house tracks and team tracks such distance may be *11½ feet*. For NARROW GAUGE RAILROADS, such distance shall be sufficient to provide a clearance between the sides of the widest cars, in the first case of not less than *36 inches*, and in the second case of not less than *18 inches*.
  - i.* The minimum distance between the center lines of all tracks of STANDARD GAUGE STREET RAILROADS shall be *11½ feet*. For NARROW GAUGE STREET RAILROADS such distance shall be sufficient to provide a clearance between the sides of the widest cars of not less than *28 inches*.
  - j.* The minimum distance at crossings between the end of the third rail of electric railroads and the nearest rail of other railroads or street railroads, shall be *8 feet*.
- 2. Streets and Public Highways.**
- a.* Railroads and street railroads which cross above streets and public highways, shall have a minimum overhead clearance above the surface of such streets

or highways of *14 feet*; and a minimum side clearance between abutments or supports, when one span is used, of *20 feet*; and a minimum side clearance, when two or more spans are used, each of *12 feet*. When such streets or public highways are occupied by railroads or street railroads, the minimum overhead clearance shall be as specified hereinbefore in section 1-a. When the street or public highway is occupied by one track, the minimum horizontal distance between abutments or supports shall be *28 feet*, and when there is more than one track, an additional distance shall be added, for each track, of *13 feet*.

- b. Telegraph, telephone and signal lines, and power lines of not exceeding 600 volts, which cross above streets or public highways, shall have a minimum overhead clearance above the surface thereof of *20 feet*; power lines of from 600 to 15,000 volts, *24 feet*; power lines of above 15,000 volts, *30 feet*; and trolley wires and trolley feeders, *19 feet*. The minimum clearances for such lines, above railroads and street railroads which occupy streets and public highways, hereinbefore specified in section 1, shall in all cases be observed.

3. Telegraph, Telephone and Signal Lines.

Telegraph, telephone and signal lines, at crossings with other telegraph, telephone or signal lines, shall have a minimum clearance, above or below such lines, of *2 feet*, unless suitably supported to prevent contact; above trolley wires or trolley feeders, *4 feet*, except for properly protected cables, when 2 feet will be permitted; below power lines of 600 volts or less, *2 feet*; below power lines of from 600 to 6,600 volts, *4 feet*; below power lines of from 6,600 to 15,000 volts, *6 feet*, and below powers lines of exceeding 15,000 volts, *8 feet*, subject to the conditions set out in note to section 1-c.

4. Power Lines—Other than Trolley Wires and Trolley Feeders.

- a. Power lines, other than trolley wires and trolley feeders, of not exceeding 600 volts, shall have a minimum clearance above rails at crossings with railroads and street railroads of *25 feet*; above streets and public highways, *20 feet*; above telegraph, telephone and signal lines, *2 feet*; above or below other power lines of not exceeding 600 volts, unless suitably supported to prevent contact, *2 feet*; above all trolley wires and trolley feeders, *4 feet*; above or below power lines of from 600 to 6,600 volts, *4 feet*; below other power lines of from 6,600 volts to 15,000 volts, *4 feet*; below other power lines of exceeding 15,000 volts, *8 feet*. subject to the conditions set out in note to section 1-c; and above all buildings and structures, *4 feet*.
- b. Power lines—other than trolley wires and trolley feeders, of from 600 to 15,000 volts, shall have a minimum clearance above rails at crossings with railroads and street railroads, of *28 feet*; above streets and public highways, *24 feet*; above telegraph, telephone and signal lines, for power lines of from 600 to 6,600 volts, *4 feet*, and for power lines of from 6,600 to 15,000 volts, *6 feet*; above or below other power lines of not exceeding 600 volts, *4 feet*; above or below other power lines of from 600 to 15,000 volts, *6 feet*; below other power lines of exceeding 15,000 volts, *8 feet*, subject to the conditions set out in note to section 1-c; and above all buildings and structures, *6 feet*.
- c. Power lines of exceeding 15,000 volts shall have a minimum clearance above rails at crossings with railroads and street railroads of *34 feet*; above streets and public highways, *30 feet*; above telegraph, telephone and signal lines, *8 feet*; above other power lines of not exceeding 15,000 volts, *8 feet*; above or below other power lines of exceeding 15,000 volts, *8 feet*; and above all buildings and structures, *8 feet*. All of the provisions of this paragraph c are subject to the same conditions set out in note to section 1-c.

### 5. Trolley Wires and Trolley Feeders.

Trolley wires and trolley feeders of railroads, and street railroads which transport or propose to transport standard freight cars, shall have a minimum clearance above their own rails of *22 feet*, and of other street railroads *19 feet*; provided that at the under-grade crossings mentioned in section 1-a maximum clearances of trolley wires above rails shall be secured under the conditions therein specified. Such trolley wires and trolley feeders shall have a minimum clearance at crossings above the rails of other railroads, and street railroads which transport or propose to transport standard freight cars, of *22 feet*; and above other street railroads, *19 feet*. Trolley wires and trolley feeders shall have minimum clearances below telegraph, telephone, signal and power lines as hereinbefore provided.

### CONSTRUCTION OF WIRE LINES.

6. The minimum clearances for wire lines hereinbefore provided shall have reference to clearances which will obtain under the most unfavorable conditions of temperature and loading. When constructing lines commonly called "drops" or "low voltage service wires" the clearances specified above streets and public highways shall apply to the entire distance between the curb lines. "Drops" or "low voltage service wires" may pass above or below other power lines of less than 6,600 volts at the clearances hereinbefore specified.

7. When "buck arm" construction is used, the clearance between the wires of the main and branch line may be the same as the separation of the wires on the arm from which the branch line is taken, increasing the specified clearance between line wires (where more than two cross arms are used) by the same amount.

8. When telegraph, telephone and signal lines, and power lines of less than 15,000 volts, cross railroads and street railroads, and wooden poles are used, spans shall not exceed 200 feet. In all cases the best selected poles shall be used for such crossings of minimum diameter not less than 8 inches. For power lines, the same factors of safety shall

be observed as prescribed in the "Specifications" referred to hereinafter in section 9. Double cross arm construction shall be used in all cases and all poles or towers at crossings shall be suitably and securely guyed to prevent wires from sagging.

9. All power lines transmitting power at 15,000 volts and in excess thereof, and which cross over railroads, street railroads, telegraph, telephone, signal and other power lines, shall be constructed to conform to the "specifications for overhead crossings of electric light and power lines," adopted at the present time by the Joint Committee of the National Electric Light Association, American Institute of Electrical Engineers, the American Electric Railway Association, the Association of Railway Telegraph Superintendents, and the American Railway Engineering and Maintenance of Way Association, in so far as the same are not in conflict with any of the provisions of chapters 499 and 500 of the Statutes of the State of California of 1911, and except further that the clearances hereinbefore provided in this order, together with the restrictions thereon, shall be observed. And further provided that in those sections of this State where low temperature and ice loads do not obtain, the specifications above mentioned may be modified to suit these conditions, provided that the prescribed factors of safety are observed.

As an alternative for the construction prescribed in the above specifications, poles of such length may be used for the crossing spans that a wire breaking at any point in the crossing span will swing clear of the wire leads beneath. As a further alternative, conditions permitting, when such power lines cross telegraph or telephone lines, the latter may be placed underground at the crossing span.

This order applies only in cases in which this Commission has jurisdiction.

This order shall be effective on and after January 1, 1913.

Dated December 14, 1912.

NOTE.—It will be understood that this Commission adopts the Specifications at *present* issued by the Joint Committee above named, and any change, modification or alteration in same which may hereafter be issued or adopted by said Joint Committee will not be applicable to the matters contained in this order until submitted to and approved in formal order by this Commission.



IN THE MATTER OF THE APPLICATION OF THE ROSEVILLE HOME  
TELEPHONE COMPANY FOR PERMISSION TO RAISE THEIR  
"RENTAL CHARGE ON FARMERS' LINES FROM TWENTY-FIVE  
CENTS PER MONTH TO FIFTY CENTS PER MONTH."

Application No. 123—Decision No. 375.

*Decided December 30, 1912.*

**Increase of Rate Denied—Excessive Operating Expenses.**

Upon application for permission to increase the monthly rental for telephone service on certain farmers' lines, it appeared that the applicant had taken over the lines in question from The Pacific Telephone and Telegraph Company and was giving a more comprehensive service, which was likewise more expensive in point of operation, especially with reference to the item of sub-stations.

*Held:* That the rate in effect was in accord with the usual rate throughout the state for like service, that the difficulty which was the basis of the application was primarily traceable to operating conditions and that there was no reason why unreasonable burdens due to the operating conditions of public utilities should be shifted arbitrarily to rate-payers, it being incumbent on telephone companies to correct such difficulties in order that they might not be a factor in any alleged necessity for increased rates.

The application was, accordingly, dismissed.\*

*L. L. King and G. M. Hannish, for applicants.*

**REPORT.**

**GORDON, Commissioner:**

This application is for permission to raise the monthly rental for telephone service on certain farmers' lines operated by the Roseville Home Telephone Company, Roseville, Placer County, California.

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\*Editor's headnote.

Thirteen stations are concerned in the proposed raise, involving a prospective increased revenue of \$39.00 per year. The testimony discloses the fact that the Roseville Home Telephone Company is a corporation which took over the responsibilities of telephone service in and about Roseville from The Pacific Telephone and Telegraph Company. It is apparent that the system as conducted by the local company gives a more comprehensive service and is likewise more expensive in operation from the standpoint of service, plant, and equipment, with particular reference to the item of substations, than under the administration of the larger company.

If these facts only were considered, there would appear to be reason in the petition of this company for an advance of the farmer line rate now under consideration.

The Roseville Home Telephone Company is operating an exchange of approximately 139 stations, and the rate applying for the so-called farmer line service is in accord with the usual rate throughout the State, although under circumstances somewhat different than are usual. While the local conditions offer some justification for alteration in this case, it would appear that this is not the principal source of difficulty. The company has not sought relief primarily in the right direction.

There is no reason why unreasonable burdens due to the operating conditions of public utilities should arbitrarily be shifted to rate payers, and it is incumbent on the telephone companies to correct such difficulties in order that they may not be a factor in any alleged necessity for increased rates. I, therefore, recommend the following order:

### ORDER.

Roseville Home Telephone Company of Roseville, Placer County, California, having applied to this Commission for permission to increase the telephone rates charged on certain so-called farmers' lines served from the Roseville exchange, alleging that such increase was necessary in order

that the company might receive an adequate income, and a public hearing having been held upon this application and it appearing from the evidence introduced at the hearing and from an investigation by the Commission that the difficulty which is the basis of this application is primarily traceable to operating conditions.

*It is hereby ordered,* That the Roseville Home Telephone Company be denied permission to raise the rates as requested in the application in this proceeding.

The order of this Commission in this proceeding must not be taken as an approval of the existing former line rates of applicant.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of December, 1912.

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IN THE MATTER OF THE APPLICATION OF SOUTHWESTERN HOME  
TELEPHONE COMPANY OF REDLANDS, TO RAISE TELEPHONE  
RATES.

Application No. 286—Decision No. 376.

*Decided December 30, 1912.*

**Increase of Rate—Maintenance by Subscribers.**

Upon application to increase the monthly charge for telephone service from \$1.00 to \$1.50,

*Held:* That, considering the investment and the service rendered, the \$1.50 rate will be reasonable under the conditions of the proposed contract submitted with the application, which provides for maintenance by the subscribers.\*

*Charles A. Rolfe*, for applicant.

*J. J. Prendergast, C. E. McEuen, D. A. Haslam*, for telephone users.

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\*Editor's headnote.



## REPORT.

GORDON, *Commissioner*:

This application is for permission to raise the monthly charge for telephone service on certain specified lines out of San Jacinto to Winchester, in Riverside County, California, from \$1.00 per month to \$1.50 per month.

The proposed change in rate is applicable to a condition entirely local. The lines involved represent an investment by the telephone company, and the company also furnishes the substation equipment, but thus far maintenance charges have been borne by the subscribers.

It is apparent to me that the \$1.00 rate formerly in effect has not been a fair rate, nor is the rate requested unreasonable, considering the investment and the service rendered, and the rate requested will be reasonable under the conditions of the proposed contract submitted with this application, which will provide for a continuance of maintenance by the subscribers.

I, therefore, recommend that applicant be permitted to put into effect the rate of \$1.50 per month under the terms incorporated in the proposed contract, this recommendation to be considered as applicable to the particular circumstances developed in this case. I submit, herewith, the following form of order:

## ORDER.

The Southwestern Home Telephone Company, of Redlands, having applied to this Commission for permission to raise its monthly rental for telephone service on two specified circuits, extending from its San Jacinto office to the town of Winchester, in Riverside County, California, from \$1.00 to \$1.50 per month under terms as set out in a proposed contract accompanying their application, and it appearing from the testimony taken, together with the investigation by this Commission, that said proposed advanced rate is not unreasonable, under the circumstances involved, and a public hearing having been held on this application,

*It is hereby ordered*, That the Southwestern Home Telephone Company, of Redlands, be and it hereby is authorized to advance, on and after January 1, 1913, the monthly charge for telephone service on the lines from San Jacinto to Winchester, Riverside County, California, from \$1.00 to \$1.50 per month.

The conditions under which this service is to be rendered at the advanced rate of \$1.50 per month shall be substantially those as set out in the proposed contract filed with said application. It must be understood that this order applies to this particular instance and is not to be taken as a general precedent.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of December, 1912.

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IN THE MATTER OF THE APPLICATION OF W. H. MOFFETT &  
SON OF LEMON COVE, CALIFORNIA, FOR PERMISSION TO  
INCREASE OF THE MONTHLY RATE ON LINES 6 AND 7 IN  
LEMON COVE, CALIFORNIA.

Application No. 71—Decision No. 377.

*Decided December 30, 1912.*

**Increase of Rate—Inadequate Return.**

Upon application for authority to increase the rates for Farmer Line Service from 30 cents to 50 cents per month,

*Held*: That the existing charge of 30 cents was not compensatory under the conditions existing at Lemon Cove; that although the increase requested was small, it would be a material and actual factor in maintaining the telephone system on a compensatory basis. The application was, therefore, granted.\*

*W. H. Moffett and J. A. Moffett*, for applicant.

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\*Editor's headnote.

## REPORT.

GORDON, *Commissioner*:

This is an application by W. H. Moffett & Son, for an order of this Commission authorizing an increase in the rates charged by applicant for telephone service rendered upon two of applicant's lines, namely, No. 6 and No. 7.

The present rate on these lines is 30 cents per month and applicant desires to be permitted to charge 50 cents per month. The service upon which the increase is desired is, in all respects, similar to what is commonly defined Farmer Line Service. The duties and responsibilities of building and maintaining lines are divided between the telephone company and the subscribers. This is a class of service which is frequently more or less unsatisfactory because of this divided responsibility, but, on the other hand, it is a class of service frequently available in rural communities which cannot develop a different class of service. A rate of 50 cents per month is not an unreasonable charge under the circumstances existing at Lemon Cove, as the duties involved in this particular service are essentially those of central office switching combined with the partial responsibility for line maintenance. Evidence was produced at the hearing which showed that the existing charge of 30 cents for this service is not compensatory under the conditions existing at Lemon Cove, and while the increase requested is small, it will be a material and actual factor in maintaining this telephone system on a compensatory basis. It was neither alleged nor indicated by the evidence introduced, that the charge of 50 cents elsewhere obtaining upon this system for similar service was not fair and equitable in view of the duties and responsibilities involved. Under these circumstances, I recommend that applicant be allowed to put the increased rate into effect.

I submit herewith the following form of order:

## ORDER.

W. H. Moffett & Son having applied to this Commission

for an order permitting applicant to put into effect a rate of 50 cents per month, payable in advance, for the service rendered on Farmer Lines No. 6 and No. 7, in order that the rate charged by applicant for this class of service may be uniform and compensatory, and a public hearing having been duly held upon this application,

*It is hereby ordered*, That W. H. Moffett & Son be, and it hereby is, authorized to put into effect on and after January 1, 1913, a rate of 50 cents per month, payable in advance, for service rendered on Farmer Lines No. 6 and No. 7.

The authority herein granted must not be taken as a final approval of the rates authorized, inasmuch as the same may at any time be affected by further orders of this Commission having to do with the class of service involved.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of December, 1912.

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IN THE MATTER OF THE APPLICATION OF EEL RIVER AND SOUTHERN TELEPHONE COMPANY, OF FERNDALE, HUMBOLDT COUNTY, CALIFORNIA, FOR AN ORDER AUTHORIZING THE FILING, PUBLICATION AND APPLICATION OF CERTAIN TELEPHONE RATES IN LIEU OF THE RATES FILED WITH THE RAILROAD COMMISSION ON APRIL 10, 1912, AND THE SUPPLEMENTS THERETO FILED ON MAY 2, 1912, AND JUNE 20, 1912.

Application No. 184—Decision No. 378.

*Dated December 30, 1912.*

### Standard Rates.

The Commission denied this application, the effect of granting which would be to establish a uniform schedule of rates for the applicant's service, and ordered the applicant to continue the existing system of charges,

previously authorized by the Commission, under which the applicant was charging the rates in effect on October 10, 1911, except for new business, to which another rate was applied.\*

A. W. Blackburn, for applicants.

### REPORT.

GORDON, *Commissioner*:

This application is "for an order authorizing the filing, publication and application of certain telephone rates in lieu of the rates filed with the Railroad Commission on April 10, 1912, and the supplements thereto filed on May 21, 1912, and June 20, 1912."

In effect the granting of this application would be the application of the uniform schedule of rates which this company asserts is, and seeks to have recognized as, the standard rates covering their service. In so far as the effectiveness of the so-called standard rates, constituting the rates filed on April 10, 1912, with this Commission, is concerned they are in full force and effect as far as they were actually applied on October 10, 1912. Following the precedent already established by this Commission, they are recognized as the rates applicable in the case of new business and in the case of such subscribers as may change their location and thereby place themselves in the attitude of new subscribers.

Such rates as were in effect on October 10, 1911, as may diverge from these so-called standards are fully provided for by this Commission's General Order No. 15†, and the present application is in effect a petition for permission to arbitrarily apply to these the standard schedules referred to.

The evidence discloses that the Eel River and Southern Telephone Company is operating a plant bought from The Pacific Telephone and Telegraph Company, and is operating in a field by virtue of contract relations with The Pacific Telephone and Telegraph Company, and that such purchase was made and such contract entered into without any ade-

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\*Editor's headnote.

†See Commission Leaflet No. 5, page 3.



quate distinction being made as to certain existing equities in the plant concerned. It was unquestionably demonstrated that many of the conditions, based upon former investments made by individuals in plant now being used to render the service involved, invalidated this company's claim to the right of generally applying their so-called standard rates, in lieu of rates as they existed on October 10, 1911.

I submit herewith the following form of order:

### ORDER.

The Eel River and Southern Telephone Company, of Ferndale, Humboldt County, California, having made application "for an order authorizing the filing, publication and application of certain telephone rates in lieu of the rates filed with the Railroad Commission on April 10, 1912, and the supplements thereto filed on May 21, 1912, and June 20, 1912," and a public hearing having been held thereon,

*It is hereby ordered*, That the application of the Eel River and Southern Telephone Company be and the same hereby is denied, and that applicant be and it hereby is directed to continue, until the further order of this Commission, in full force and effect such rates as were in effect on October 10, 1911, for the several classes of telephone service involved.

*And be it further ordered*, That for new business, or such business as may be so regarded by virtue of a new location on the part of existing subscribers, the Eel River and Southern Telephone Company shall apply the rates heretofore filed with this Commission on April 10, 1912, constituting its so-called standard rates for the several classes of service involved.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of December, 1912.

IN THE MATTER OF THE APPLICATION OF E. W. CROSBY, DOING  
BUSINESS UNDER THE NAME OF REEDLEY TELEPHONE COM-  
PANY, FOR PERMISSION TO ADJUST TELEPHONE RATES.

Application No. 171—Decision No. 379.

*Decided December 30, 1912.*

**Standard Rates—Deviations Therefrom.**

Upon application to adjust telephone rates, involving an increase in the rates (1) for exchange service and (2) for farmer line service in the instances where deviations from the standard rates existed,

*Held:* 1. With respect to the rates for exchange service, that, owing to the fact that some subscribers have equities in the lines over which they are receiving service, the existing discrepancies in rates are not necessarily indicative of discrimination, and that the applicant should continue the service under the existing rates throughout the natural life of the existing lines, or until such time as the equities in the investment involved can be definitely determined.

2. With respect to the rates for farmer line service, that, since the rate for farmer line service is reasonable for lines owned by subscribers and the company is willing to apply this rate to lines owned by it, there is no reason for continuing deviations from the standard rate.

The application was accordingly denied with respect to exchange service, and granted with respect to farmer line service.\*

*E. W. Crosby*, for applicant.

*R. M. Reid, J. H. Duff, J. J. Kolb, E. K. Smith, O. D. Lyon*, protestants.

**REPORT.**

**GORDON, Commissioner:**

This is an application by E. W. Crosby for permission to adjust telephone rates upon the system which he is conducting under the name of the Reedley Telephone Company. The proposed adjustment involves an increase of rates on two separate classes of service, namely, exchange service and farmer line service. I will consider these two services separately.

The adjustment of rates requested will result in raising

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\*Editor's headnote.

the rate now collected from six exchange subscribers. The general question of the reasonableness of the existing exchange rates is not raised nor considered in this application. The application merely alleges that the deviation from the standard rates involved in these six instances are a source of annoyance. I am of the opinion, however, that this of itself is not an adequate reason for altering the rate. Upon an investigation into these deviations from the standpoint of discrimination and adequacy of revenue certain difficulties are encountered which make a favorable recommendation upon this portion of the application inadvisable.

Evidence introduced at the hearing disclosed the fact that various individuals had contributed to the investment of this telephone system and the evidence indicated that some of the present subscribers had equities in the lines over which they were obtaining service. When Mr. E. W. Crosby purchased the property now being operated under the name of the Reedley Telephone Company no detailed inventory of this property was furnished which could be used to segregate the interests in the system which may be privately owned.

In view of these uncertainties and the inadequacy of information upon which to determine the equities in the lines involved, I find that the existing discrepancies in rates are not necessarily indicative of discrimination, and that such inconvenience as Mr. E. W. Crosby alleges is caused from these discrepancies is insignificant and negligible. Discrimination is not established for the same reason. I recommend, therefore, that the Reedley Telephone Company be required to continue this service under the existing rates throughout the natural life of the existing lines, or until such time as the equities in the investment involved can be definitely determined. When the time arrives that these lines must be rebuilt the present difficulties which prevent the application of standard rates at this time will have been eliminated, and the standard rate for the classes of service involved will necessarily apply and the situation complained of will reach a natural and equitable solution.

Considering now the other class of service upon which E.

W. Crosby desires to adjust his rates, that is, the so-called farmer line service, the evidence disclosed that the adjustment applied for will raise the rate from 25 cents to 30 cents per month for about 63 subscribers.

The application alleges that the standard rate charged this class of service for an exchange the size of the exchange at Reedley is \$3.60 per year. No objection was made to the reasonableness of this rate and the question of the reasonableness of this rate is not passed upon in this application, which is directed solely to the question of whether the existing deviations from this rate are justified and should be continued or whether applicant should be permitted to apply the standard rate to all of the subscribers upon the farmer lines. While the same situation of indefinite ownership is present in the farmer lines as it is in the exchange lines, this fact does not present difficulties when the rates for farmer line service are considered. The reason for this is that the rate for farmer line service contemplates an investment by the subscribers. If the telephone company is willing to apply the rate whether or not it owns the line and if the rate is reasonable in case the subscriber does own the line, it would then appear that there is no good reason for continuing deviations from the standard rate, the reasonableness of which has not been questioned. I find, therefore, that applicant is justified in applying the standard rate of \$3.60 per year in the case of the deviations complained of, and I recommend that this portion of the application be granted.

I submit herewith the following form of order:

### ORDER.

E. W. Crosby, doing business under the name of the Reedley Telephone Company at Reedley, Fresno County, California, having applied to this Commission for an order authorizing an adjustment of telephone rates charged by applicant for both exchange and farmer line service, and a public hearing having been duly held upon this application, and the Commission being of the opinion that while applicant has justified

the requests for an adjustment in the rates for farmer line service, applicant has failed to make out his case in regard to exchange service:

*It is hereby ordered*, That E. W. Crosby, doing business under the name of the Reedley Telephone Company, be and he hereby is denied permission to put into effect those certain adjustments involved in the application in this proceeding as far as such adjustments apply to rates for service within the exchange radius of the Reedley exchange.

*Be it further ordered*, That E. W. Crosby, doing business under the name of the Reedley Telephone Company, be and he hereby is granted permission to put into effect on and after January 1, 1913, those certain adjustments requested in the application in this proceeding as far as such adjustments apply to so-called farmer line service and that for such service applicant be permitted to apply generally the standard rate therefor now filed with this Commission and to eliminate existing deviations therefrom on the basis of the rates now on file, this permission being applicable to service beyond the exchange radius of the Reedley exchange.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of December, 1912.

## **GEORGIA.**

### **Railroad Commission.**

#### **APPLICATION OF THE GAINESBORO TELEPHONE AND TELEGRAPH COMPANY FOR AUTHORITY TO INCREASE RATES FOR LOCAL EXCHANGE TELEPHONE SERVICE IN THE CITY OF ROCK- MART, GEORGIA.**

**File No. 10734.**

*Decided January 7, 1913.*

#### **Increase in Rates—Installation of Common Battery System.**

##### **[EDITOR'S NOTE PREPARED FROM RECORD.]**

This was a petition by the Gainesboro Telephone and Telegraph Company for permission to increase its rates in Rockmart in accordance with an agreement of its subscribers that when a common battery system had been installed and was furnishing efficient service, they would pay the proposed rates.

It was objected that the Company had overestimated its real investment and was already earning a reasonable dividend. The Company submitted a valuation of its property and an estimate of the earnings which would be received under the proposed rates showing that the return would be 5.82% upon the present value of \$11,797.41, which included an allowance of \$2,500.00 for going value. The objectors claimed that the exchange did not cost over \$6,689.00.

The Commission granted the petition, ordering that the proposed rates should be the maximum rates to be charged by the petitioner after February 1, 1913.

#### **ORDER.**

Upon consideration of the record in the above entitled matter and of the evidence and argument submitted at the hearings had thereon, it is,

*Ordered*, That on and after February 1st, 1913, and until the further order of the Commission, the maximum rates allowed to be charged by the Gainesboro Telephone and Telegraph Company, for local exchange telephone service at Rockmart, Georgia, shall be as follows:

	Per Month
For unlimited special line business stations....	\$3.00
For unlimited duplex line business stations....	2.50
For unlimited special line residence stations...	2.00
For unlimited duplex line residence stations.....	1.50

## **KANSAS.**

### **Public Utilities Commission.**

**IN THE MATTER OF THE APPLICATION OF THE MISSOURI AND KANSAS TELEPHONE COMPANY FOR PERMISSION TO PURCHASE AND ACQUIRE FROM THE KANSAS INDEPENDENT LONG DISTANCE TELEPHONE COMPANY, ONE TELEPHONE POLE LINE FROM HIAWATHA, KANSAS, TO SABBETHA, KANSAS, WITH BRANCHES AT MORRILL AND FAIRVIEW; ONE LINE FROM HIAWATHA BY WAY OF HORTON AND MUSCOTAH TO HOLTON; AND TWO CIRCUITS FROM MUSCOTAH TO ATCHINSON.**

**Docket No. 337.**

*Decided December 27, 1912.*

### **Purchase of Toll Lines—Continuance of Existing Connections and Service.**

This application by the Missouri and Kansas Telephone Company for permission to purchase certain toll lines from the Kansas Independent Long Distance Telephone Company was granted, upon condition that the applicant should perform all existing contracts for physical connection between the Kansas Independent Long Distance Telephone Company and connecting companies, except as to certain provisions calling for exclusive service which could not be complied with for the reason that the Missouri and Kansas Telephone Company already has connections in many towns. While the application was pending, an agreement to this effect was made between the Missouri and Kansas Telephone Company and the connecting companies. As a result, all connecting companies will receive the service from the Bell System which Bell subscribers receive and will also obtain all the services from the Independent lines which they now receive.\*

### **ORDER.**

**This case came on for hearing at Topeka, Kansas, on May 7th, 1912, and after the introduction of evidence, the in-**

**\*Editor's headline.**



terested parties requested that decision be withheld pending negotiations between the applicant and representatives of telephone companies already operating in the towns through which said toll lines extend.

And on this 27th day of December, 1912, the matter comes on for further consideration, there being present the Missouri & Kansas Telephone Company, represented by its attorney, Mr. J. L. Hunt, and representatives of the Mutual telephone companies of Sabetha, Morrill, Robinson and Hiawatha, and the Missouri and Kansas Telephone Company agrees with said mutual telephone companies to carry out all existing connection contracts between the Kansas Independent Long Distance Telephone Company and connecting companies (except provisions calling for exclusive services). It being further provided in said agreement that all connecting companies are to receive all of the service over the Bell System that the Bell subscribers are now receiving, and will also receive all the service over the Kansas Independent Long Distance Telephone Company's lines which they are now receiving. The exception regarding the provision covering exclusive service is made for the reason that in many towns the Missouri & Kansas Company already has connections and it is impossible to make the service exclusive. The Commission therefore finds that the application herein should be granted on the terms agreed upon between the Missouri & Kansas Telephone Company and the connecting companies represented.

*It is therefore ordered*, That the Missouri & Kansas Telephone Company be, and it is hereby, authorized to purchase and acquire from the Kansas Independent Long Distance Telephone Company, upon the terms and conditions hereinbefore set out, the telephone property in the State of Kansas, as follows:

- 1 Telephone pole line from Hiawatha, Kansas, to Sabetha, Kansas, with branches to Morrill and Fairview.
- 1 Line from Hiawatha by way of Horton and Muscotah, to Holton.
- 2 Circuits from Muscotah to Atchison, Kansas.

upon the express conditions that the Missouri & Kansas Telephone Company carry out all existing connection contracts between the Kansas Independent Long Distance Telephone Company and connecting companies (except provisions calling for exclusive service). This means that all connecting companies will get all the service from the Bell System that Bell subscribers now get and will also get all the services from the Independent lines that they are now getting. The exception regarding the provisions concerning exclusive service is made for the reason that in many towns the Missouri & Kansas Telephone Company already has connections and it is impossible to make the service exclusive.

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IN THE MATTER OF THE APPLICATION OF THE DIGHTON TELEPHONE COMPANY FOR PERMISSION TO ESTABLISH A TOLL RATE OF 15 CENTS BETWEEN DIGHTON AND HEALY, KANSAS.

U. B. A.—No. 42.

*Decided January 9, 1913.*

**Toll Rate—Division of Interline Revenue.**

Upon application by The Dighton Telephone Company to establish a toll rate of 15c. between Dighton and Healy,

*Held:* That 15c. per message is a reasonable charge for service over the line of The Dighton Telephone Company between Dighton and Healy; and that \$12 per quarter is a reasonable compensation to be paid by The Healy Telephone Company to The Dighton Telephone Company for the use of such toll line, each company to retain the tolls collected by it for service over said line.\*

**ORDER.**

This case came on to be heard at Topeka, Kansas, on November 27, 1912, due notice having been given to interested parties. The application was presented by F. B. MacKinnon,

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\*Editor's headnote.

representing The Dighton Telephone Company, and after hearing the evidence the matter was taken under advisement, and now on this 9th day of January, 1913, after reviewing the record and evidence, and being duly advised in the premises, the Commission does find that a reasonable charge for telephone service over the line of The Dighton Telephone Company between Dighton and Healy, is 15 cents per message, each company to retain the amount collected for exchange service.

The Commission finds further that in addition to the amount collected by The Dighton Telephone Company for such toll line service, a reasonable compensation to be paid by The Healy Telephone Company for the use of such toll line would be \$12.00 per quarter.

*It is therefore ordered,* That The Dighton Telephone Company and The Healy Telephone Company be, and they are hereby, authorized to charge and collect, effective February 1, 1913, for toll service between said towns, 15 cents per message, each company to retain the amount so collected.

*It is further ordered,* That The Healy Telephone Company be, and it is hereby, required to pay to The Dighton Telephone Company, \$12.00 per quarter for the use of its toll line for the transmission of such messages.

*It is further ordered,* That The Dighton Telephone Company be, and it is hereby, required to establish and maintain at all hours, both day and night, toll line communication over said line between Dighton and Healy.

## MARYLAND.

### Public Service Commission.

#### IN THE MATTER OF THE COMPLAINT OF J. S. COURTNEY *vs.* SEVERNA PARK TELEPHONE COMPANY.

Case No. 445.

*Decided November 4, 1912.*

#### Inadequate Service.

Upon complaint alleging inadequate service, the Commission caused an examination to be made by its Engineer and adopted his recommendations as to improvement of the service which he found to be unsatisfactory.

The defendant was ordered to overhaul certain wire connections, to properly adjust the ringing apparatus at the subscribers' stations and to keep the bell boxes locked.\*

#### OPINION.

##### HERING, *Commissioner*:

The complaint in this case was filed August 13th, 1912, alleging inadequate service by the Severna Park Telephone Company. This Company commenced business in March, 1911; was never incorporated, and is under the management of individuals, as a firm. Its territory is very limited, covering about four square miles, from Jones Station to Earleigh Heights on the Maryland Electric Railroad, and from the Magothy to the Severn River.

Mr. W. Craig Lord, President of the Company, testified at a hearing which was held on September 16th, 1912, as follows:

"We have a contract with The Chesapeake and Potomac Telephone Company to develop that territory. They had three 'phones in that territory which was all they had in fifteen years, and as Severna Park was being developed, it was necessary to open an exchange, so they made a proposition that they would furnish the board and a trunk line from

\*Editor's headnote.

Annapolis, if we would build up that territory. We have 16 subscribers now."

Our Engineer was directed to make an examination of the service rendered by this Company, and report to the Commission. Under date of October 7th, 1912, the Engineer filed his report. The report shows that the service was unsatisfactory, and that there was good reason for complaint. In it he says:

- "The complaints generally seem to be founded upon,
- (a) Difficulty of subscribers in getting answer from operator.
  - (b) The inability of operator, at times, to ring up subscribers.
  - (c) The length of time elapsing before reported trouble is corrected.
  - (d) Noises in the instrument seriously interfering with transmission."

and then makes the following recommendations for the improvement of the service:

- "1. That proper electrical connections be made between the ends of wires on the South side of the tracks of the Maryland Electric Railways, where the wires passing from under the railway tracks are joined to the overhead wires.
2. Overhauling connections between wires at the terminal rack at the switchboard where the cables are connected.
3. That the ringing apparatus on each of the sixteen stations be inspected and the bells properly adjusted; the doors of the bell boxes to be kept locked so that access may be had only by the properly authorized employee of the company."

These recommendations are, in the opinion of the Commission, reasonable and necessary, and we will, therefore, issue an order requiring the Company to adopt them and report to the Commission when the work is completed.

With this requirement upon the Company, to carry out the recommendations of our Engineer, we believe the service

will be greatly improved, and the complaint thereby be satisfied.

ORDER No. 951.

*Whereas*, The Chief Engineer of the Commission has made a report under date of October 7th, 1912, of the condition of the property and the service of the Severna Park Telephone Company, and made certain recommendations for its improvement, which report and recommendations have been adopted by the Commission, and,

*Whereas*, We believe the installation of the changes and improvements suggested by the Engineer will fairly satisfy the complaint in this case, it is, therefore, this 4th day of November, 1912, by the Public Service Commission of Maryland,

*Ordered:*

1. That a copy of the recommendations of the Chief Engineer be sent, with a copy of this Order, to the Severna Park Telephone Company.
2. The said Severna Park Telephone Company be, and it is hereby ordered and directed to make the changes and improvements to its system, as recommended by the Chief Engineer, to wit:
  1. "That proper electrical connections be made between the ends of wires on the South side of the tracks of the Maryland Electric Railways, where the wires passing from under the railway tracks are joined to the overhead wires.
  2. Overhauling connections between wires at the terminal rack at the switchboard where the cables are connected.
  3. That the ringing apparatus on each of the sixteen stations be inspected and the bells properly adjusted; the doors of the bell boxes to be kept locked so that access may be had only by the properly authorized employee of the company."

*It is further ordered*, That the said Severna Park Telephone Company, within 30 days from the receipt of this order, be directed to make the improvements which the order requires, and report to the Commission when the work is completed.

## NEBRASKA.

### State Railway Commission.

IN THE MATTER OF THE APPLICATION OF VALPARAISO TELEPHONE COMPANY FOR AUTHORITY TO ESTABLISH A RATE OF \$18.00 PER ANNUM FOR TEN-PARTY METALLIC FARM LINE SERVICE.

Application No. 1632.

*Decided December 13, 1912.*

### Installation of Metallic Service—Approval of Rate.

This application to establish a rate of \$18.00 per annum for ten-party metallic farm line service was granted, inasmuch as the new rate was intended to apply to a class of service not theretofore provided and as the previous twenty-party grounded farm line service was to be continued at the old rate of \$12.00 per annum.\*

### ORDER.

*Whereas*, The Valparaiso Telephone Company of Valparaiso has made application to the Nebraska State Railway Commission for authority to establish a rate of \$18.00 per annum for ten-party metallic farm line service:

And it appearing to the Commission, upon due investigation and consideration, that the application provides for a new rate, calculated to apply to a class of service not furnished at the present time, and that the Company will continue to give service at its old farm line rate as at present filed with the Commission of \$12.00 per annum for grounded service twenty-party line, and it further appearing that the application is reasonable and warranted by existing conditions:

*It is ordered* by the Nebraska State Railway Commission that the desired authority be, and the same is, hereby granted, the new filing to become effective from and after January 1, 1913.

Made and entered at Lincoln, Nebraska, this 13th day of December, 1912.

\*Editor's headnote.

## NEW JERSEY.

### Board of Public Utility Commissioners.

#### IN THE MATTER OF THE COMPLAINT OF THE POSTAL TELEGRAPH-CABLE COMPANY *vs.* NEW YORK TELEPHONE COMPANY, ALLEGING ILLEGAL DISCRIMINATION IN FAVOR OF THE WESTERN UNION TELEGRAPH COMPANY.

*Decided January 7, 1913.*

#### Discrimination—Call Words for Telegraph Companies—Routing of Telegraphic Messages.

Upon complaint by the Postal Telegraph-Cable Company that the New York Telephone Company was discriminating against the complainant by diverting business intended for it to The Western Union Telegraph Company:

*Held:* 1. That the exclusive assignment of the call word "Telegram" to any particular telegraph company works an undue and unjust discrimination against other telegraph companies who are subscribers to the same exchange.

2. That call words may in appropriate cases be assigned to subscribers and that the summoning of telegraphic service is such an appropriate case. Such an arrangement will contribute to the public convenience and if an additional reason were necessary, such a reason is found in the existence of the arrangement for transmitting telegraphic messages by telephone.

3. That "Postal" and "Western Union" are appropriate call words for the complainant and respondent, respectively.

4. With respect to the manner of dealing with the routing of telegraphic messages, that, where the telegraph company asked for is not a subscriber to the exchange, it is proper for the telephone operator to inform the inquirer of the fact and to name in alphabetical order the telegraph companies which are subscribers; that, where the telegraph company asked for fails to respond to the call of the exchange or the line is busy, the telephone operator is justified in reporting the situation to the inquirer and, upon request, naming in alphabetical order such other telegraph companies as may be reached through the exchange; and that, where an inquirer either does not name any particular telegraph company or expresses his indifference as to the routing of the telegraphic message, the exchange should inform the inquirer that he is required to choose a particular telegraph company and that the operator is forbidden to route the message. If the inquirer refuses to make a definite choice of a telegraph company, the operator must desist from routing the message.

An order was entered accordingly.\*

\*Editor's headnote.



*R. H. Overbaugh*, for the complainant.

*G. W. Artz & T. P. Sylvan*, for the respondent.

### REPORT.

The complainant, by letter dated April 20th, 1912, brought an informal complaint against the respondent. It was averred therein that the respondent was illegally discriminating against the petitioner. Said discrimination, it was claimed, consisted in diverting telegraph business intended for petitioner to The Western Union Telegraph Company. Said letter contained instances which, it was contended, bore out these allegations. The answer of the respondent proved unsatisfactory to the complainant, who, under date of July 23rd, 1912, asked for a formal hearing. The matter was accordingly heard before the Board on August 27th, 1912, and on September 24th, 1912. Both hearings were held at the State House, in Trenton. Testimony was taken at both hearings, and briefs have been filed by both parties in interest.

The issues presented in this case are :

*First:* Does the exclusive assignment of the call word "Telegram" to The Western Union Telegraph Company work an undue or an unjust discrimination by the New York Telephone Company against the Postal Telegraph-Cable Company?

*Second:* Ought any telephone call except by number be assigned to a telegraph company, and can a call word be assigned to telegraph companies without working discrimination, or without tending thereto in the concrete circumstances?

*Third:* If the second query be answered in the affirmative, what are proper call words for the two telegraph companies concerned?

*Fourth:* To what extent may a telephone company in answering calls, affect the routing of telegraph messages?

We are of opinion that the exclusive assignment of the call word "Telegram" to any particular telegraph company works an undue and unjust discrimination against other

telegraph companies, subscribers to the same exchange. This results from the fact that the call word "Telegram" tends automatically to assign, to the telegraph company enjoying the exclusive use of said call word, messages that the inquirer may have no desire or intention should be transmitted by that particular telegraph company. The finding to this effect in similar cases decided by the New York\* and Maryland† Commissions meets our approval. We, therefore, find that the assignment by the New York Telephone Company to The Western Union Telegraph Company exclusively of the call word "Telegram", constitutes an undue and unjust discrimination against the petitioner. The order to issue in this case will accordingly prohibit the continuance of this practice. It is but fair, in passing, to note that the respondent offered before the Commission to discontinue the practice in question, provided the petitioner would acquiesce in the arrangement of call words for both telegraph companies.

In answer to the second query above noted, we are of opinion that a call word in appropriate cases may be assigned to a subscriber to a telephone exchange. Such an arrangement, we believe, will contribute to the public convenience. If, for example, it is practicable to employ such call words to summon assistance afforded by the police or fire departments, or by the ambulance service, the public convenience would be promoted by such call words. Somewhat similar considerations prevail in summoning telegraph service by the use of a telephone call word. Mr. Charles C. Adams, Vice-President of the Postal Telegraph-Cable Company, himself admitted on the stand that such a call "is a convenience to some"; and that "It would be a convenience to anyone who didn't know the call of the telegraph office". (Transcript of testimony of Sept. 24, 1912; p. 50.)

If it be argued that the use of such call words affords opportunity or temptation for the respondent to discriminate unjustly against the petitioner by diverting telegraph business to the Western Union, it seems a sufficient answer to

\*See Commission Leaflet No. 8, page 38.

†See Commission Leaflet No. 11, page 33.

say; first, that if such diversion were attempted it would be susceptible of detection, and a remedy would follow; second, that the *certain* convenience of the public ought not to be sacrificed to avoid a *possible* detriment to the Postal Telegraph-Cable Company. We, therefore, find that telephone call words in appropriate cases may be employed; and find that the summoning of telegraph service is such an appropriate case for their use.

Assuming that the propriety of call words for telegraph companies is established, what are proper call words to be assigned to the two telegraph companies concerned? The assignment of the word "Postal" to the Postal Telegraph-Cable Company, and the assignment of the call word "Western Union" to The Western Union Telegraph Company appear to furnish proper call words for the two telegraph companies in question. Such is the arrangement ordered in New York State by the Public Service Commission, Second District.\*

The propriety of the call word "Postal", for the complainant, is attested by the fact that the record before us seems to show no instance where this call word (when used without the addition of words which might suggest the present call word of the Western Union) failed to secure the telephonic connection desired.

The fitness of the suggested call word for the respondent is not denied.

We, therefore, find and determine that "Postal" and "Western Union" are appropriate call words for the complainant and respondent respectively.

If additional reason were necessary for approval of call words for telegraph companies, such reason is found in the existence of the arrangement for transmitting telegraph messages by telephone. The arrangement between the New York Telephone Company and The Western Union Telegraph Company permits a telephone subscriber to send messages to a telegraph office for immediate transmission, even where the local telegraph office is closed. When the local tele-

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\*See Commission Leaflet No. 8, page 38.

graph office is open, the call word will require the telephone operator to make a certain connection. When the local telegraph office is closed, the same call word will require the telephone operator to make a different connection. The inquirer's time and energy are saved by using the same call word in either case. To require all telephone calls to be by number would entail an explanation either by conversation with the telephone operator, or by directions printed in the telephone directory; whereas the call word avoids both. It should be noted that this service now afforded the Western Union by the respondent has been offered to the complainant on similar terms. The complainant has chosen to refuse, but can hardly urge its refusal as ground for preventing the public from enjoying facilities offered a rival telegraph company.

The last query involved in this case is to what extent a telephone company in answering inquirers' calls may affect or influence the routing of the inquirers' telegraph messages. In reply it may be said that when an inquirer asks to be connected with a telegraph company which is not a subscriber to the telephone exchange, it is manifestly proper for the telephone company to inform the inquirer of the fact, and to name the telegraph company or companies which are subscribers to the exchange, enumerating such companies, if there be more than one, in the alphabetical order in which said telegraph companies are listed in the printed telephone directory.

In case an inquirer asks a telephone exchange to be connected with a particular telegraph company designated by the inquirer by name, it is manifestly improper for the telephone operator to ask or to suggest that the telegraphic message be routed by a different telegraph company. If, however, the telegraph company specifically asked for does not respond to the operator's call, or is busy in other telephonic communication, which does not permit connecting the inquirer with the telegraph company sought, the telephone operator is justified in reporting the situation to the inquirer, and, upon the inquirer's request, in naming such

other telegraph company or companies as may be reached through the exchange. If there are more than one such company, the telephone operator should name such companies in alphabetical order as they appear in the list of subscribers' names in the printed telephone directory. The practice of discriminating unduly or unjustly against a particular telegraph company, by unfairly reporting its line "busy," or "not answering," is easily capable of detection by a rival company believing itself aggrieved.

In case an inquirer informs the exchange that he wants to send a telegraphic message, but either does not name any particular telegraph company, or expresses his indifference as to the routing of the telegraph message, the exchange should inform the inquirer that the inquirer is required to name and choose a particular telegraph company, and that the operator is forbidden to route the telegraphic message. Should the inquirer not know what telegraph company or companies afford service, the operator may acquaint him with the name or names of all such companies as are subscribers to the exchange, reciting the companies by name in the alphabetical order indicated above. If the inquirer, after being thus apprised of the facts, refuses to make a definite choice of a telegraph company, the exchange operator must desist from routing the telegraphic message.

Accordingly, an order will be entered, operative on and after February first, Nineteen Hundred and Thirteen, requiring the New York Telephone Company to withdraw the use of the call word "Telegram," and thereafter to desist from using said call word, or any other call word which would improperly prejudice the rights of the complainant.

The Order will designate the call words "Postal" and "Western Union," for the two telegraph companies respectively concerned; and will require that each of them be listed both by number and by call word in the printed telephone directory. Said Order will also govern the telephone company's dealing with the routing of telegraphic messages where a telegraph company asked for is not a subscriber to the exchange; where the telegraph company asked for

fails to respond to the call of the exchange and where the inquirer fails affirmatively to designate a particular telegraph company.

Dated January 7th, 1913.

**ORDER.**

This case having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Board having on the date hereof made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made part hereof,

*It is hereby ordered* by the Board of Public Utility Commissioners,

(1) That said New York Telephone Company be and it is hereby required to discontinue the use of the word "Telegram" as a call word for The Western Union Telegraph Company or any other telegraph company within this State.

(2) That said New York Telephone Company be and it is hereby directed and required to assign to the Postal Telegraph-Cable Company and Western Union Telegraph Company call numbers as is usual with other subscribers to its service, and that in addition thereto, the word "Postal" be assigned as a call word for the Postal Telegraph-Cable Company and the words "Western Union" be assigned as a call word for The Western Union Telegraph Company.

(3) That said call word for each company respectively be printed in the subscribers' directories of said Telephone Company hereafter issued, in such manner and with such explanation as to show clearly that a person desiring to send a telegram over the lines of the Postal Telegraph-Cable Company may call said company by the use of the single word "Postal," and that a person desiring to send a telegram over the lines of The Western Union Telegraph Company may call said company by the use of the words "Western Union."

(4) That said New York Telephone Company be and it hereby is required to make a rule for the government of its switchboard operators that in no case shall the word "Telegram" be recognized as a call word, and that if such word

be used the operator shall at once inform the person calling that it is not recognized as a call and that such operators shall thereupon require the person calling to use a proper call word.

(5) *It is hereby further ordered*, That the New York Telephone Company institute and enforce a rule or rules for the government of its employees and switchboard operators such that the observance of said rule will result as follows:

(a) If an inquirer asks of an exchange operator for telephonic connection with a telegraph company not subscribing to the exchange, the inquirer shall be informed of the fact of such non-subscription, and of the telegraph company, or companies, subscribers to said exchange, in the alphabetical order in which the names of such subscribing telegraph company or companies appear in the printed telephone directory.

(b) Where an inquiry is made for telephonic connection with a designated telegraph company, and said designated telegraph company does not or cannot answer with promptitude, the inquirer shall be apprised of the situation, and at the inquirer's request so to do, and so only, the exchange operator shall designate the other telegraph company or companies that can be reached through the exchange, naming the companies, if more than one, in the order indicated in (a) *supra*.

(c) Where an inquirer informs the exchange operator of the inquirer's desire to transmit a telegram, but either fails to indicate the telegraphic company to be employed, or expressed indifference thereto, the exchange operator shall desist from directing or advising or designating any particular telegraph company, and shall inform the inquirer that the inquirer must designate the telegraph company to be employed. The operator shall name the company or companies connecting with the exchange, in the same order as designated in (a) *supra*, and shall connect only at the inquirer's specific designation of telegraph company.

This order is effective February 1st, 1913.

Dated January 7th, 1913.

IN THE MATTER OF THE COMPLAINT OF GATELY AND HURLEY, *et al.*, AGAINST THE DELAWARE AND ATLANTIC TELEGRAPH AND TELEPHONE COMPANY,

*and*

IN THE MATTER OF THE COMPLAINT OF BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF CAMDEN, AGAINST THE DELAWARE AND ATLANTIC TELEGRAPH AND TELEPHONE COMPANY.

ABSTRACT OF THE DECISION\*.

The original complaint was filed by Gately & Hurley. Joining with them were some twenty-three of the largest commercial, manufacturing and banking houses in Camden. The testimony taken covered not only charges to all complainants, but to all patrons in the entire territory of the company in the State.

The essential issues raised in this case were (1) Unjust Discrimination; (2) Absence of a Reasonable Classification of service offered; (3) Unjust and Unreasonable Rates.

**I. Unjust Discrimination.**

Unjust discrimination was alleged to consist in the non-simultaneous termination of all non-standard rates. It was also alleged to exist against the County of Camden by reason of the Company's according to the City of Camden more favorable rates than to the Sheriff's office.

It is *Held* that the particular complainants who had long enjoyed preferential rates in comparison with the bulk of consumers on standard schedule were in no equitable position to complain that they had been first singled out and required to pay the standard rates regularly filed with the Commission. This is no condonation of the company's failure simultaneously to put the standard rates into force universally.

It is *Held* that requiring the complainants to pay standard rates (which standard rates are higher than the rates long enjoyed by the complainants) is not to be construed as an increase of rates but

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\*Prepared by Board of Public Utility Commissioners of New Jersey.



as a standardization of non-standard or unjustly discriminatory rates; nor is it to be construed as a change in an "existing classification" of rates, but an excision of what was essentially akin to illegal rebates. Consequently the burden of proof cast by the statute on a public utility raising rates or changing an existing classification was not applicable to the standardization of the complainants' rates.

As regards the complaint of the County of Camden, the company contended that there is a disparity of circumstances and conditions in that very valuable privileges are accorded to the company by the City and not similarly accorded by the County. This contention was not rebutted by the County. The County's claim of unjust discrimination is therefore dismissed.

## II. Absence of Reasonable Classification of Service Offered.

The allegation of the absence of a reasonable classification of service was based on two contentions: First, that as between large and small users of telephone service, the respective classification of service offered was not reasonable; Second, that as between measured and unmeasured service outside the city limits, the classification of service offered by the company was not reasonable.

The record disclosed that different rates are quoted for service to large and small users respectively. Whether the rates *per se* are just or not is discussed under the third head of the Report. The relative fairness of the rates to large and small users was not successfully impugned by the testimony offered. Apparently the contention that the company did no longer quote flat rates for inter-community service hinged on the fact that the annual flat rate covering Philadelphia and Camden is no longer quoted by the respondent. So long as the annual Camden rate is not successfully attacked, the absence of a quoted rate by which the complainant can obtain unlimited service to Philadelphia can not be remedied by this Board. Being interstate traffic, it is *Held* that this Board has no jurisdiction thereover.

## III. Unjust and Unreasonable Rates.

Under this caption the valuation of this particular property for rate making purposes, and the more general question of the principles underlying such valuations are considered.

The complainants desired an appraisal of the company's property in Camden, and an inquiry into expenses incurred and revenues received in Camden.

The company contended that these facts, if known, would furnish no adequate data for a determination of the case inasmuch as the toll and local service are inextricably intertwined. The company contended that the inquiry and valuation should be coterminous with the company's property in territory it served; and that a proper classification of the various cities, towns and districts served within said territory would allow a determination as to the property of rate schedules, for each community served. After consultation the Board adopted the view presented by the company, and allowed

the inquiry to cover the entire territory served by the company in this State.

Consequently it is *Held* "inasmuch as intercommunication across distance, irrespective of municipal boundaries, or the availability of such service, is of the essence of telephone service, it is either not practicable at all or would involve undue and unnecessary delay to segregate and isolate service costs within restricted municipal areas."

It is also *Held* "that to reach a proper basis on which a reasonable return may be earned, the entire property of the system of the Delaware and Atlantic Telegraph and Telephone Company inventoried will suffice; and that when this information is in possession of the Board, data respecting population and class of service, required in various places will allow a proper fixation of rates for each particular locality."

The company contended that it was entitled to earn a return upon a base which is the sum of the reproduction cost of the physical property, *new, plus* the cost of establishing the business. Underlying all valuations for rate-making purposes are certain fundamentals.

"The general principles which underlie all just valuations for rate-making purposes are simple. These great general underlying principles are two in number. The first aims at securing for consumers generally a prompt and adequate supply at reasonable rates, of those services which they require of public utility companies. To insure this end, a sufficient incentive must be held out to enterprisers and investors. Such an incentive is the assured prospect of a sufficient return upon outlay in supplying service. The first general principle is prospective in its reach; it looks to the future. It is comprehensive in its aim; it is bent on obtaining the adequate supply of community wants.

"The second general underlying principle seeks to conserve the legitimate value of investments in public utility enterprises. It regards the past rather than the present; the individual investors rather than the community of consumers. It is perfectly consonant with the first general principle enunciated. For unless the legitimate value of past investments is preserved by rate-making decisions, the effective incentive for individuals to take similar risks in the future is impaired or extinguished.

"In the light of these two general principles, it is *Held* that a fair present day estimate of the capital necessarily and judiciously sunk in establishing the business and not thereafter recouped from revenue should enter as an element into the base upon which a fair return should be allowed. Not to include such part of the outlay or investment as is necessarily and judiciously made at the start in canvassing for and enlisting customers, or as is necessarily and wisely incurred by reason of foregoing returns during the construction period when money is locked up acts to repel future enterprisers from similar ventures. Not to allow a fair return on such outlay when made, is to extinguish in part the value of the necessary investment requisite to afford service to the community as a whole. The allowance on this score must, it is true, be made with circumspection.

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Living consumers must not be held in the power of the dead hand stretched forth from the grave of fictitious or injudicious investment. Cognizance must be taken of the fact that the individual merchant ordinarily calculates his percentage of profit on his stock, not on his stock plus the good will of his business. Cognizance must be taken also of the fact that an estimate of reproduction cost reflects in part one value attributed to a mechanism whose end is assumed to be the rendering of specific services, and not to become a mere pile of potential junk. But when all is said by way of abatement or allowance, it is *Held* that the inclusion of a proper estimate for the cost of establishing business, a cost quite distinct from the bare structural value of the apparatus, cannot be gainsaid.

"The Board allowed for cost of establishing the business \$797,800.

"For this item the company claimed \$1,184,600."

Apart from estimating an allowance for the cost of establishing the business, is the value to be put on the physical property for rate-making purposes. One extreme contention is that replacement cost *new*, of the company's property used and useful in supplying service should be taken as the basis. The other extreme contention is that unexpired service value of the company's property, used and useful in rendering service should serve as the basis. A middle ground is that replacement cost new minus an allowance for demonstrated wear and tear should be taken as the basis.

It is *Held* that both extremes are likely to be erroneous. To take replacement cost *new*, without any abatement, would be relatively unfair to companies whose tangible property is at present as large in value as the tangible property represented by its replacement cost new. There is in the latter case a warranty of the judiciousness both in time and amount of the investment which is lacking where a large accrued depreciation in physical plant exists.

The contention that only unexpired service value of tangible property should be taken as a basis fails to give proper regard to the unique obligation incumbent on a public utility of maintaining a service in extent and adequacy equal to what the company holds itself out to provide; and this too without improper additions to capital account. It is *Held* that as the company's " \* responsibility is measured by a sum in excess of the unexpired service value of its tangibles, \* \* the equitable base upon which it is entitled to a return is in excess of the unexpired service value of its apparatus, and approaches as a limit the total replacement cost new of its tangible property."

As a tentative approach to this basis it is *Held* that an abatement from replacement cost *new*, of expired service of wearing value ascertained to be due to actual age and wear should be made. "In the case at bar, it would make no difference, so far as the disposition of the pending case is concerned, which basis for a return is chosen. On the basis of reproduction value new, or upon the basis of an abatement such as is contemplated in the Knoxville case, or on the basis of such deduction as might be calculated upon expired service value estimated from life tables, it is demonstrable that the past returns to this company have not been excessive, unjust or unreasonable."

It is *Held* however, that replacement cost new is the proper base on which to estimate annual depreciation. It is also *Held* "from now on the utilities will be expected to maintain intact the present value of their capital investment. When therefore rates of depreciation are estimated in accordance with due and proper allowance therefor as provided in the statute, the sums standing to the credit of the depreciation reserve will be deducted from the total value of assets to ascertain theoretically the base on which utilities be entitled to a fair return."

As to the rate of return the Commission finds a return of 8 per cent. on the company's investment to be fairly equitable, when consideration of all conditions is taken. Especially as this return is to cover all such items as bond discount, brokerage, or other costs of obtaining capital. The company asks for a margin of profit equal to 10 per cent. until such time as a surplus is accumulated that will assure a regular 8 per cent. margin of profit.

This is denied. The addition of 2 per cent. is not warranted even temporarily. One purpose of an adequate depreciation allowance is to secure this very uniformity of net profits which the company desires to put beyond hazard. Where adequate provision is made for annual depreciation, unusual outlay in a given year for replacements is taken care of without necessitating a drop in dividends. The technical apparatus is still in process of change. The proper allowances for depreciation are still, of necessity, largely conjectural. Moreover, so far as this particular company is concerned, brisk competition is still offered in many parts of its territory. An 8 per cent. annual return upon the lowest of the three canvassed in this Report \$5,338,000 is \$427,040. The earnings and expenses \* \* indicate that in 1908 the corporate deficit was augmented by \$198,085.56; in 1909 by \$43,123.97; that the net earnings for 1910 were \$160,756.32 and for 1911 were \$170,196.13. The disparity between the actual present earnings and a return of \$427,040 is so large that it is not necessary to consider in detail whether the company's estimate of earnings should not be somewhat reduced by reason of the royalty paid to the parent company; by reason of possible excessive prices paid to the Western Electric Company for supplies; by reason of possible inclusion in operating charges or overhead charges that should be deducted because of the inclusion of similar items in the capitalized estimate of various parts of the Plant and by reason of estimated appreciation of parts of its property. The net profits at present are clearly not excessive, but demonstrably moderate so far as this company is concerned. It follows that its rates as a whole cannot be assailed as unjust or unreasonable; and that the petitions so far as alleging extortionate or undue rates should be dismissed.

The company claimed as replacement cost, *new*, of its plant and plant assets, as of August 31, 1911, \$6,287,900. The Board finds the company's investment in plant and plant assets, measured by a fair estimate of replacement cost, *new*, to be \$5,959,460.

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The Board finds, with reference to tangible property

Reproduction Cost, *new*.....\$5,959,460.00

Reproduction cost deducting depreciation by  
inspection ..... 5,409,460.00

Deduction theoretical depreciation..... 4,540,173.00

For gross revenues of the Company for 1911, for the State of New  
Jersey, were found to be

Exchange Revenue .....\$ 671,978.17

Toll Revenue ..... 450,439.09

Sundry Revenue ..... 1,772.48

Total Gross Revenue .....\$1,124,189.74

For the same year the total expenses (including \$272,000 for  
depreciation over and above current maintenance) were \$953,993.61  
leaving net earnings for the year at \$170,196.13.

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GASKILL AND GASKILL, Esqrs., for Gately and  
Hurley, *et al.*,

GEORGE J. BERGEN, Esq., for Board of Chosen  
Freeholders of the County of Camden,

JOHN L. SWAYZE, Esq., and ROBERT V. MARYE,  
Esq., for the Delaware and Atlantic Telegraph and  
Telephone Company.

#### REPORT.

The complainants filed their respective petitions in July, 1911. As the complaints were largely identical, they were consolidated for the purpose of hearing. The complainants requested that the property of the company be appraised. The time required to make the appraisal necessitated some delay before detailed testimony could be advantageously taken. The taking of testimony began November 21st, 1911, at the State House in Trenton, and by successive adjournments was continued from time to time, as indicated in the record of the case, until July 23d, 1912. Briefs have been submitted by the attorneys for Gately & Hurley, *et al.*, and by the attorneys for the company. The testimony has been voluminous and detailed, and a large number of exhibits has been submitted.

All the complainants had been obtaining service from the company under similar contracts. Beginning in May, 1911, and continuing through June

and into July, 1911, the company notified the complainants of its unwillingness to continue service under these contracts. The terms of the contracts at that time were admittedly advantageous to the complainants. The contracts in question allowed the complainants unlimited service to Camden and neighboring places within a ten-mile radius, and also to Philadelphia, for a flat rate of approximately one hundred and fifty dollars a year. The superseding contracts offered by the company materially increased the price of service to the complainants. Gately & Hurley, *et al.*, averred that the prices quoted in the superseding contracts constituted (1) an unjust and unreasonable increase; and (2) a change in the classification of service outstanding when the Public Utility Act was passed. The aforesaid complainants also charged (1) that the respondent company refused to establish reasonable classifications of service as between large and small users of the telephone, and as between measured and unmeasured service outside of the city limits; (2) that the respondent company refused to furnish adequate and proper service at reasonable and proper rates; (3) that the respondent company discriminated against the complainants in not terminating simultaneously all contracts similar to those formerly enjoyed by the complainants; (4) that the company intended by the changes in rate, to augment unduly the revenues of the "Bell System."

The Freeholders of the County of Camden, whose contract for telephone service in the Sheriff's office had also been superseded, brought against the respondent company practically the same charges. Peculiar to the complaint of the Freeholders, is the charge that discrimination is specifically practised against the county, and in favor of the City of Camden by the City government's continuing to enjoy more favorable rates for service than the Sheriff's office.

It appears that what the company designates as "the present standard of schedule rates for Camden and vicinity" was put in force on June 1st, 1909; that said schedule was duly filed with this Board after its organization; and that in 1910, in response to the Board's request, the

company had filed with this Board a list of all its items extant contracts at rates other than those specified in the aforesaid schedule. The promulgation of the new schedule in 1909 did not immediately conform all actual rates to those in said schedule. It rather indicated the terms on which new business would be written. In some instances, service was continued after June 1st, 1909, at non-standard rates, in accordance with these earlier contracts; and the contracts naming said non-standard rates were not immediately terminated. The discontinuance of service at these non-standard rates, while it issued in an increase in price to the complainants, was in the direction of conforming actual rates to those of the schedule. The company also avers, and it is uncontroverted of record, that the particular type of contract which the complainants enjoyed had not been offered to new subscribers since September 5th, 1902. The supersession of the complainants' contracts was, therefore, in the direction of a "clean-up." Without conceding that the filing of standard rate schedules with the Board automatically authenticates such rates, or stamps them with the Board's official approval, the schedules so filed do constitute a *prima facie* rule of what the regular rates may be presumed to be. The case in point differs materially from the promulgation of a new rate schedule which would increase the rates for an entire community. The presumption as to what the regular schedule rates are is strengthened in proportion as the bulk of the actual rates charged conform to this schedule. The question arises, can the first two allegations of the complainants, that the discontinuance of their contracts worked "an unjust and unreasonable increase of rates" and "a change in the classification of service outstanding when the Public Utilities Act was passed" be construed as coming under Article II, 17, (h) of Chapter 195 of the Laws of 1911?

This section provides, in short, that when a public utility increases "any existing individual rates, joint rates, tolls, charges or schedules thereof" or changes "any existing classification" the "burden of proof to show that the said increase, change or alteration is just and reasonable shall

be upon the public utility making the same." It also provides that the Board may suspend for three months such increase or alteration pending a hearing to determine whether such changes are just and reasonable. Suppose a public utility under an agreement had been giving a customer a discriminatory low rate. Does the law stipulate that the utility can not advance his rate up to the standard without being required to bear the burden of proof that the increase demanded of the hitherto favored individual customer is just and reasonable? We think not. The burden of proof thrown by this section of the law upon the public utility applies to advances in rates made generally to customers, and not to instances where a particular customer's rate is augmented by conforming his rate to the standard schedule of charges. For this reason the complainants' request that the new rates exacted of them be suspended pending a hearing was declined by the Board. We do not, at this point of our opinion, prejudge the question of the justice or reasonableness of the general schedule of rates or of the classifications of service offered. But if the advance in price to the complainants in the present case, or the withdrawal of certain classifications of service formerly furnished them is simply incidental to the process of eliminating existent discriminations, in that case the advances in rate or the changes in classification do not offend against the section of the statute already cited.

The remaining charges made by the complainants are reducible to three: (1) unjust discrimination; (2) unreasonable classifications of service as between large and small users of the telephone, and as between measured and unmeasured service outside the city limits; (3) unreasonable, unjust and extortionate rates for service. Under the last charge we subsume the allegation that the respondent company has endeavored by means of the changes complained of to swell unduly the revenues of the American Telegraph and Telephone Company. We shall discuss these three charges, first as relating to the complainants, and second, as relating to the Delaware and Atlantic system as a whole.



I. UNJUST DISCRIMINATION AS REGARDS THE  
COMPLAINANTS.

The fact is admitted that the supersession of the complainants' contracts did not effect an entire elimination of all non-standard contracts for telephone service rendered by the company in Camden. The Company admits that on October 1st, 1910, there were three hundred and fifty-two subscribers out of a total of about twenty-five hundred in Camden who held contracts at non-standard rates. Of these three hundred and fifty-two, there were fifty, according to the company, in the class to which the complainants belonged. On July 31st, 1911, the company shows that there remained two hundred and five contracts at non-standard rates. The company therefore admits the allegation that it "discriminates nevertheless among the users of telephone service in Camden, and has not cancelled all such contracts as are not in accordance with its schedule of rates." But the singling out of this particular class of subscribers and the termination of their contracts can hardly be urged as a just grievance *by these particular complainants*. The continuance of any non-standard rates is a grievance over which all subscribers at standard rates may justly complain. It is an illegal practice that deserves reprobation, and requires speedy abatement. *But so far as these particular complainants are concerned*, the company's partial and incomplete standardization of its Camden rates is no ground for charging undue or unjust discrimination. As well might the former large recipients of heavy railroad rebates complain of discrimination when required to pay standard charges, because certain smaller concerns are still left in enjoyment of rates less than standard.

This particular conclusion, to wit, that these individual complainants are in no equitable position to complain of unjust discrimination, is strengthened by considering how great was the discrimination in rates which they have long enjoyed. Mr. William L. Hurley testified that his concern used about thirty calls a day in Camden, and forty calls a day in Philadelphia; or about nine thousand

calls per year in Camden and twelve thousand in Philadelphia. The Philadelphia calls alone, at the regular message rate of five cents per call, would amount to \$600 a year. For this service, with all of Camden (and a ten-mile radius thereabout in addition) Gately & Hurley paid \$150 a year. Exhibit 33 shows that in Camden, the average number of calls per station per day is slightly less than two. It is not unfair to assume that the average number of calls by residence stations is less than the average number of daily calls by business stations. Assuming that Camden subscribers to four-party line service make two calls daily every day of the year, or seven hundred and thirty calls per year, the price they pay per call is approximately three and one-third cents. Gately & Hurley have been paying about *seven-tenths of a cent* per call, or less than one-fourth of the estimated average price per call paid by this class of smaller subscribers, all of whose calls, moreover, are confined to Camden, while more than one-half of Gately & Hurley's calls were to Philadelphia. A similar comparison made on the basis of message rates would demonstrate the enormous disparity in rates per call paid formerly by these particular complainants as contrasted with the standard rates. From whatever standpoint viewed, the rates enjoyed by this particular complainant have been ridiculously disproportionate, and pointedly discriminatory against the hundreds of subscribers at standard rates in Camden.

Nor do we attribute any great weight to the complainants' contention that when they originally signed their contracts, the contracts were burdensome to the subscribers, and were continued in the far-off expectation that they would eventually prove advantageous. We think it inherently unlikely that for the first eight years the contract was burdensome or of indifferent advantage to Gately & Hurley. Even if it were, it has been admittedly advantageous for the past three years; so much so, that any hypothetical burden during its earlier term has been offset very generously. For twelve years and five months Gately & Hurley enjoyed the benefit of their contract. On

intimation by the company of its discontinuance, they promptly offered to "double up" (Printed Testimony, p. 27). Failing to obtain a satisfactory rate from the respondent company, Gately & Hurely concluded with the Eastern Telephone and Telegraph Company a contract which gives them a private wire to Philadelphia and free service in Camden and Gloucester for \$365 a year. It appears, therefore, without question, that this particular complainant has been enjoying service at a fraction of the rates paid by subscribers on the regular schedule; that the rates per call have been of late years ridiculously small in comparison with charges for comparable service; that higher flat rates were promptly offered by Gately & Hurley when the company signified its intention of superseding their contract; and that analogous service was taken with a competing company at rates more than twice as high as those enjoyed under the superseded contract.

Of the twenty-three complainants joining with Gately & Hurley, and comprising some of the largest commercial, manufacturing and banking houses of that city, the First National Bank of Camden is the only one which has presented specific facts with reference to its use of the telephone under its contract now superseded. It was admitted that the bank was making probably seven thousand Philadelphia calls per year before its contract was canceled (Printed Testimony, p. 38). It was contended that the \$150 rate was at first "a great hardship," but "at the present time this old rate would be rather an advantage" (Printed Testimony, p. 37). It was admitted also that the old rate would be unfair to people in Camden paying \$60 a year for Camden service only. While the bank's use of the service was less extensive than that made by Gately & Hurley, we judge that the cases differ only in degree and not in kind.

The Board of Freeholders made the particular allegation that the County of Camden, as compared with the City of Camden, was discriminated against by the discontinuance of the county's former contract. The respondent, in its answer, alleged a disparity of circumstances

and conditions. It averred that the rates to the city for service "were in return for very valuable privileges granted to the respondent by the said City of Camden." The attorney for the Board of Freeholders did not put in evidence to challenge the fact that certain privileges were accorded the respondent company by the city and not similarly accorded by the county. He contended rather that the county government was entitled "to get some privileges in their rates" (Printed Testimony, p. 39); that the company is to-day discriminating against certain of its patrons (Printed Testimony, p. 40); and that the rates proposed, *i. e.*, the company's present schedule, are exorbitant.

Confining ourselves for the moment to the specific issue whether the discontinuance of the complainants' contracts worked an undue or an unjust discrimination of which these complainants may equitably complain, our answer is in the negative. It may well be that the respondent should have eliminated all non-standard contracts simultaneously. But it can hardly be argued that former conspicuous beneficiaries of non-standard rates can urge their grievance of being put on the standard schedule, and equitably ask for a restoration of their erstwhile special privileges. We do not say that the respondent is justified in a piece-meal standardization of its rates to subscribers. But those who may equitably complain of this method of standardization are those who have been paying standard rates, not those who have been enjoying special advantages at non-standard rates. If a selective process of standardization were to be applied, it would not seem improper that the contracts farthest removed from standard be first chosen for elimination.

## II. UNREASONABLE CLASSIFICATIONS OF SERVICE AS REGARDS THE COMPLAINANTS.

Gately & Hurley, and the complainants associated with them, allege that the respondent company "has refused to establish reasonable classifications of service and such classifications as will distinguish between the large users or business houses and the smaller users of the tele-

phone, and as between measured and unmeasured service outside of the city limits."

The record discloses but little evidence bearing upon this allegation. Apparently, it covers three points: first, that the company's present system of classification of service is not reasonable; second, that a proper classification should quote special rates for large users, on the theory that in merchandising "the quantity always regulates the price" (Printed Testimony, p. 33); third, that flat rates for inter-community service should be included in a proper scheme of classification.

The respondent company's general scheme of classification distinguishes various kinds of service, and quotes different rates applicable thereto. The evidence of Mr. Spalding (Printed Testimony, p. 85, sq.) shows that business service is differentiated from residence service, direct line service from party line service, exchange service from toll service, and measured service from flat rate service. Studies are also made of various communities served by the respondent. Exhibit 33, taken in connection with Mr. Spalding's testimony (Printed Testimony, p. 92, sq.) shows that certain relevant local data are duly noted, such as the population, its size and character, the dominant industries, the tax valuation of real estate, the municipal area and the average of calls per station per day.

Based on such studies the service offered is classified into lettered classes, A, B, C and E; and different rates are quoted accordingly. Exhibit 34 shows that this general scheme of classification prevails in contiguous territory in Pennsylvania and Delaware. The reasonableness of this general scheme of classification does not appear to be attacked by the complainants except in the local discrimination practised by quoting different residence rates in Trenton from those quoted for similar service in Atlantic City and Camden. There has not been evidenced against the classification scheme as a whole any feature that would warrant us in pronouncing it unreasonable.

The second implied charge against the company's classification is that it fails to quote special rates to large users

of the service. The schedule of rates filed by the respondent includes, however, special rates for private branch exchanges, such as most if not all large users would require. Without passing on the comparative price of service secured by installing private branch exchanges, it is clear that large users are enabled thereby to get special rates less than those quoted in the various classes, A, B, C and E, *supra*. The prices at which service is furnished by the company for private branch exchanges are attacked, but this is a question of price rather than of classification. As a question of price, it will come up later for discussion. But the company's schedule does unquestionably provide "such classifications as will distinguish between the large users or business houses and the smaller users of the telephone," allegation to the contrary in item 5 of Gately & Hurley's petition notwithstanding.

The third point in said petition as to classification is apparently that a reasonable classification should quote flat rates for inter-community service. The respondent's counsel (Printed Brief, p. 31) contends that the company does precisely what the company is alleged not to do. And the allegation to which reference is here made is that the company "has refused to establish such classification as will distinguish between the large users or business houses and the smaller users of the telephone, *and as between measured and unmeasured service outside of the city limits.*" We do not find in the record, however, that the company quotes flat rates "as between measured and unmeasured service outside of the city limits." Mr. Spalding testified (Printed Testimony, p. 88) that

"inter-community rates are on a fixed schedule irrespective of the value of the service as such to the particular communities. The inter-community rates, however, have two important modifications: the first is, that the charge per mile decreases as the length of the haul increases, and second, that for communities very close together, the rate is either reduced below the standard schedule or in many cases is abolished entirely, and the inter-community rate is absorbed in the community rate."

This, however, is not offering classifications of service "as between measured and unmeasured service outside of the city limits." And apparently a contract offered by the Eastern Telephone and Telegraph Company gives the subscribers for \$365 a year a private wire to Philadelphia, listed on the Philadelphia exchange (Printed Testimony, p. 29).

Whether (apart from the particular price named) such a contract ought to be included in the classifications of service offered by the Delaware and Atlantic Telegraph and Telephone Company to subscribers, raises a question upon which evidence was offered only indirectly. If the Delaware and Atlantic rates for private branch exchanges were shown to be reasonable, such a tender of private wire to places outside of the city limits, and at a flat rate, might readily prove superfluous. Reserving the question of price for later discussion, it may be said that the petitioners' insistence upon being quoted, a flat rate for inter-community service is hardly a practical issue under the circumstances. The one place affected is Philadelphia, and service thereto and the rates demanded for such service, as the complainants' counsel admit, are beyond the jurisdiction of this Board. Such inter-communication is inter-state; and the Interstate Commerce Commission is the tribunal to which the petitioners must appeal for the establishment of a flat rate schedule for service from Camden to Philadelphia. It is, of course, true that in many respects, the two cities constitute parts of an industrial whole; but this circumstance is one to be urged before a tribunal having jurisdiction over their inter-communication.

### III. UNREASONABLE PRICES AS REGARDS THE COMPLAINANTS.

Under this caption we shall consider exclusively the issue of alleged unreasonable prices for service demanded of the particular complainants at bar. We reserve until later the discussions whether these complainants in common with all subscribers in the Delaware and Atlantic territory are required to pay excessive, unreason-

able or exorbitant rates for service. We also reserve until later the treatment of discrimination as between localities in the Delaware and Atlantic territory, where such discrimination might affect not alone these individual complainants, but their fellow-townsmen as well. Here we are concerned alone with the rates formerly exacted of these complainants as compared with the rates now demanded of them by the respondent company.

Mr. Hurley testified that under the superseding contract offered him, his business concern estimated it would have to pay \$1,372 per year for the service he previously obtained at the flat annual rate of \$150 (Printed Testimony, p. 28). He testified also that his concern had concluded a contract with the Eastern at \$365 per year, and that this service in conjunction with a \$60 local contract with the Delaware and Atlantic for incoming calls has created a situation where "now it doesn't make very much difference whether we have a Bell or not" (Printed Testimony, pp. 29 and 30, sq.).

It was urged on behalf of the First National Bank of Camden, that in place of the \$150 formerly paid for the year's service, the bank had made a contract with the Keystone, with "practically the privileges of the old Bell" (Printed Testimony, p. 37). It was also stated that

"the rates now charged by the Keystone are less than those charged by the Bell. We have a new Keystone that takes the place of the Bell, and I think it is some dollars cheaper than the old contract was" (Printed Testimony, p. 39).

The "old contract" we understand to mean the present contract offered by the *old company* (the Bell, or the Delaware and Atlantic Telegraph and Telephone Company), and not the old flat rate of \$150 per annum for Camden (including the ten-mile radius) and Philadelphia.

The petition of the Board of Freeholders of the County of Camden (Sec. 3) avers that

"in place of the discontinued contract, said Telephone Company proposed a new rate for the Sheriff's phone which, considering the number of calls



made, would increase the sum paid by your petitioner for the same service about one hundred and fifty dollars per year."

The particular point that here arises for discussion narrows itself to the single inquiry whether the increased rates demanded of the petitioners, and the contrasted rates granted by a rival telephone company suffice of themselves to pronounce the present rates quoted by the Delaware and Atlantic to the petitioners unjust, unreasonable and extortionate.

It is to be noted that the respondent company in the first section of its answer to the petition of Gately & Hurley, *et al.*,

"expressly denies that the new rates demanded in the case of Gately & Hurley amount approximately to One Thousand Dollars per year for unlimited service."

It will be seen by reference to Mr. Hurley's testimony (Printed Testimony, pp. 27, 28) that his estimate of \$1,372 per year was based on \$326, annual rental of special apparatus; \$416 for a girl operator; and \$630 for 21,000 messages at a three-cent rate per message. It is questionable whether the \$416 for a girl operator is fairly to be included. Such an operator might have to be employed and her time might be fully occupied in telephone work; but if the concern has hitherto been originating 21,000 calls per year, and receiving a similar number of calls, it is apparent that somebody's time hitherto has been necessary to attend to this business. That it has not been confined in the hands of one person makes no difference. If we then exclude this item of \$416 for the operator annually, a nearer basis of comparison would seem to be \$926, or the sum of the annual rental of apparatus and the charge for 21,000 messages. Even this in practice could apparently be reduced, if Messrs. Gately & Hurley had concluded a \$60 contract for unlimited Camden service and had used the new contract for originating their Philadelphia calls only. By this plan they would have had to pay \$60 for unlimited Camden service, \$326 annual

apparatus rental and \$360 for 12,000 Philadelphia calls at three cents a call. This would total \$746 a year. To this would be added the cost of originating calls in the area formerly given free in the Camden ten-mile radius. Apparently, from Mr. Hurley's testimony (Printed Testimony, p. 33), this additional amount would come to five dollars a month. Adding \$60 to the above sum of \$746, we find that the comparative figures for similar service under the superseded contract and the proffered contract should stand roughly as \$150 to \$800.

Unfortunately, we have no exact basis for comparison in the other two cases. The First National Bank finds their service over the Keystone "some dollars cheaper." The Sheriff's office calculates that its charges would be doubled, and increase from \$150 to \$300 per year.

Presumably the case of Gately & Hurley is as accentuated an instance of the increase in charges as can be cited. The increase here is over five-fold. It must, however, be remembered that the \$150 rate can not be assumed to cover the costs imposed by rendering the service afforded at that price. The fact also that Gately & Hurley offered to "double up" when apprised of the impending termination of their old contract goes to indicate something as to the commercial value Gately & Hurley attached to this service. The fact, moreover, that a competitor of the Delaware and Atlantic asked \$365 for supplying a service commensurate with the service formerly rendered for \$150 by the Delaware and Atlantic goes to indicate roughly what another telephone company appraised the service at. Judge Gaskill said at one of the hearings that

"It is self-evident that a corporation—public utility corporation, is not going to furnish service for less than they can afford to furnish it, and that that is a measure of standard that the Commission can use, if the Commission see fit."

A comparison on this basis, of charges exacted by similar companies for similar service is often of great use. But such comparisons are most serviceable when two public utilities are compared where each has a monopoly in its own locality. The case is not infre-

quent for two competing utilities in the same area to quote rates below cost of service, each in order to worst the other, with an idea eventually of securing exclusive control, or of selling out at a handsome profit calculated on the demonstrated power to do mischief. We have therefore, nothing more than a presumption that \$365 would cover the cost of service to the Delaware and Atlantic, although the service was formerly supplied by the Delaware and Atlantic at the \$150 rate.

Another pertinent consideration emerges when we calculate the rate per message which Gately & Hurley would have been required to pay if they had continued service as indicated above at a cost of about \$800 annually. With 21,000 originating calls per year, the price per call would amount to a trifle less than four cents. This average price per call, when taken in consideration with the fact that more than half of the calls were to Philadelphia, greatly lessens what appeared at first as an exorbitant rate for service. Message rates offered by the Delaware and Atlantic Telegraph and Telephone Company run from six to three cents per call for local calls. These calls, however, are restricted to the local area served. It may well be that, considering the volume of business done by Gately & Hurley, over the telephone, they would be entitled to a contract that would reduce the price per call below four cents. When, however, we come to the question of determining what schedule of charges should be substituted for those in the superseding contracts, we are brought face to face with the fact that the great bulk of this business, where the rates are complained of, is interstate in its nature. Unlimited local service in Camden, a business house like Gately & Hurley secures for \$60 a year. Originating 9,000 local calls as they do, the cost to Gately & Hurley per call is two-thirds of a cent. There is no complaint that this is an unreasonable price for the average telephone call. There is no reason *prima facie* for holding this rate for the local Camden area excessive or unreasonable. Nor can a remedy in this particular situation, if warranted, be obtained except by some schedule that is effective for interstate calls to Philadel-

phia. This Board, then, cannot pronounce unreasonable the local charges affecting these particular complainants. Nor can it set a schedule to replace the ones complained of, without stepping beyond its well-defined jurisdiction and taking cognizance of interstate traffic. This the Commission has no legal right to do. If the rates which the petitioners denounce as unreasonable are to be shown to be such, the ground must be wider than the seemingly arbitrary increase in the rates to the petitioners at bar. To that general aspect of the matter—the reasonableness of rates in the Delaware and Atlantic territory generally—we now address ourselves.

#### IV. THE RATES OF THE DELAWARE AND ATLANTIC TELEGRAPH AND TELEPHONE COMPANY AS SAID

##### RATES AFFECT ITS PATRONS GENERALLY.

Gately & Hurley, *et al.*, in section 8 of their petition, request that this Board will

“appraise and value the property of the Delaware and Atlantic Telegraph and Telephone Company for the purpose of ascertaining and fixing reasonable classifications, tolls and rates; and further investigate the receipts from and expenses of operation, the rentals and royalties paid and to whom, for the purpose of ascertaining and fixing reasonable classifications, tolls, rates and charges.”

The Board of Chosen Freeholders of the County of Camden incorporate an identical request in their petition. The request, if taken literally, would seem to cover the company's entire property, or certainly all of such property within the State of New Jersey. At the hearing of December 13th, 1911, it transpired that the petitioners sought to learn the value of the company's property in Camden, the receipts in Camden, and the wages paid in Camden (Printed Testimony, p. 199, sq.). These items, the respondent admitted could be ascertained and given, but insisted that the items aforesaid would not furnish any adequate basis for determining a schedule of reasonable rates. This contention of the company seemed to the Board to be substantially correct. The plant in that city and the services performed by the staff in that city are employed in-

distinguishably in local and toll service. The receipts in the aggregate from these two distinct sources for the entire State of New Jersey in 1911 were: from exchange (local) revenue \$671,978.17, and from tolls, \$450,439.09 (Exhibit 5-A). To determine how much of the plant in Camden and how much of the work paid for in Camden is done for local and toll service, respectively, would require an allocation of expense to the two kinds of service which would be arbitrary at best. If a question of railway rates, for example, were involved, it would be an anomalous procedure to inventory the carrier's property within a particular county, in the attempt to determine a basis for rates for freight shipments within the county. If within the county there were a large city with an expensive terminal, it is quite clear that the terminal would be employed for traffic generally, and not for shipments of freight solely within the county boundaries. The plant of the Telephone Company within the state should rather be regarded as an interlocking whole. The Board took this general position, and in accordance therewith made the following ruling:

"The Board is satisfied that inasmuch as intercommunication across distance, irrespective of municipal boundaries, or the availability of such service, is of the essence of telephone service, it is either not practicable at all or would involve undue and unnecessary delay to segregate and isolate service costs within restricted municipal areas.

"The Board is also of the opinion that to reach a proper basis on which a reasonable return may be earned, the entire property of the system of the Delaware and Atlantic Telegraph and Telephone Company inventoried will suffice; and that when this information is in possession of the Board, data respecting population and class of service, required in various places will allow a proper fixation of rates for each particular locality.

"In accordance herewith, queries of counsel will be confined to eliciting the information essential to the case as defined herein."

Early in the progress of the case, the company asked that it be dealt with.

"on broad lines and not confined within the narrow scope of the Gately & Hurley rates or similar rates . . . (that) the Commission consider the case from the standpoint of the interests of the public in all that part of New Jersey in which the Delaware and Atlantic Company operates, etc."

The Board ruled that the testimony admitted should cover both the cases of the petitioners, and the patrons in the entire territory of the Delaware and Atlantic in this State (Printed Testimony, p. 46).

In order not to encumber the record needlessly by frequent interpolations of facts required to illuminate the case, a brief resume is here introduced of the history and status of the respondent company.

The Delaware and Atlantic Telegraph and Telephone Company, a New Jersey corporation, was formed in 1904; and in January, 1910, this company was merged and consolidated with a New York corporation bearing the same title. The New York Company was originally formed in 1882, and operated in southern New Jersey and eastern Pennsylvania. Before the merger and consolidation above mentioned, the New York company had ceased to operate in Pennsylvania. At present, therefore, the Delaware and Atlantic Telegraph and Telephone Company, a New Jersey corporation, operates in what was originally known as West Jersey and in a part of New Castle County, Delaware (Printed Testimony, p. 65).

In the summer of 1911, the Board authorized the transfer of the property of this company, located in Delaware, to the Diamond State Telephone Company.

The Delaware and Atlantic is a part of the Bell System. Except for a few shares necessary to qualify the direct-orate, its stock is owned by the Bell Telephone Company of Pennsylvania. This in turn is similarly owned by the New York Telephone Company, which in turn is owned by the parent company, the American Telegraph and Telephone Company. This chain of ownership brings it about that the shareholders of the parent company

practically own the Delaware and Atlantic. If we "think away" the intervening sheaves of securities, it is the proprietors of the parent company who furnish the service to, and who receive the rates from the telephone patrons in southern New Jersey. The Delaware and Atlantic is a sub-licensee of the parent company, paying annually  $4\frac{1}{2}$  per cent. of its gross receipts to the parent company, in return for which payment, instruments and various services are furnished to the sub-licensee (Printed Testimony, p. 125, sq.). The parent company is not only a holding company, but an operating company. It operates certain "long-distance" lines (Printed Testimony, p. 224, sq.). It also owns a controlling interest in the Western Electric Company from which the Bell sub-licensee companies obtain a very great part of their materials and supplies. Thus, since 1904, the total purchases of the Delaware and Atlantic from or through the Western Electric Company, have amounted to over \$4,686,000 (Testimony of July 23, 1912, p. 49).

On December 31st, 1909, the capital stock of the Delaware and Atlantic was \$400,000 (par). At that date among the Delaware and Atlantic's liabilities were notes and accounts payable mainly or wholly, to the Bell of Pennsylvania, aggregating \$6,069,314.11 (Exhibit 45 for details). By an agreement of December 31st, 1909, the Bell of Pennsylvania accepted \$5,600,000 stock of the Delaware and Atlantic at par for \$6,000,000 of obligations owing by the Delaware and Atlantic. This brought the Delaware and Atlantic's capital stock to \$6,000,000 par where it stands at present. Exhibit 2, submitted by the company, would apportion on the basis of plant valuations in New Jersey and Delaware, \$4,764,000 of said stock, or just a trifle less than 80 per cent., as applicable to New Jersey as of August 31st, 1911. Upon the stock of the Delaware and Atlantic two dividends have been paid; one of 10 per cent., in 1894, amounting to \$37,490, and one of  $1\frac{1}{2}$  per cent., in 1911, amounting to \$90,000. The total interest payments from 1897 through 1908 have aggregated \$2,214,664.28. Prior to 1905, however, operation was not confined to Delaware and southern New Jersey,

but included a part of eastern Pennsylvania (Exhibit 57). The rate of interest paid for the Bell advances was at 6 per cent. from 1897 to 1904, and at 5 per cent. thereafter.

In the State of New Jersey to-day, the Delaware and Atlantic has approximately 35,000 stations, and serves a section having a population of approximately 600,000. In certain parts of this territory the Delaware and Atlantic meets competition. Over 15,000 stations, it is estimated, are operated in this region by competitors of the Delaware and Atlantic (Printed Testimony, p. 385). The plant of the Delaware and Atlantic has been largely rebuilt and extended since 1900. In 1900, the company operated about 3,800 stations in this state largely confined to the larger cities like Camden, Trenton and Atlantic City. Only 307 telephone stations, or 17 per cent. of the total number, were outside these three cities in 1899, as compared with 15,848 stations, or 45 per cent. outside the same three places at present. Toll lines were few. The construction was almost wholly of open wires, carried on pole lines. There was no conduit of any kind. The instruments were of the magneto type requiring the subscriber to ring a bell to signal the exchange. The general construction, compared with the present plant, was distinctly poor (Printed Testimony, pp. 65, 66, 67, 68). The switchboards were located mainly in rented quarters.

As against the plant of 1900, the present plant and equipment of the Delaware and Atlantic is vastly larger, more efficient and more valuable. Its apparatus is modernized. Underground and cable construction have been installed in large measure, and the principal exchanges are in property owned by the company. Not to go into details at this point, it may be said that \$150 per station is sometimes taken as a rough approximation of the physical property required for a development of this general character. If this be multiplied by 35,000, the number of stations in New Jersey, an amount of \$5,250,000 would be obtained as a valuation of the physical property. The auditor's books, as of August 31st, 1911, carried the physical property in New Jersey at \$5,187,400; and the company contends that the replacement cost new would amount



to \$6,029,100 (Exhibit 11½). For the year 1911, the gross revenue for the State of New Jersey was as follows:

Exchange revenues .....	\$ 671,978.17
Toll revenues .....	450,439.09
Sundry revenue .....	1,772.48
<hr/>	
Total gross revenue .....	\$1,124,189.74

For the same year the total expenses (including \$272,000 for depreciation over and above current maintenance) were \$953,993.61. The net earnings for the year were placed at \$170,196.13, out of which a dividend of \$61,056 was paid, the balance added to surplus and undivided profits amounting to \$109,140.13 (Exhibits 5-A, 6-A and 8-A).

The inventory and valuation of the Company's property in New Jersey was made in the first instance by the company itself under the general direction of Mr. Hayward, engineer of the Bell Telephone Company of Pennsylvania and associated companies. The detailed evidence discloses the thoroughness and particularity with which this work was done. Mr. Betts, the Commission's Chief Inspector of its Utilities Division, carefully checked the inventory and appraisal, and certified to its general correctness, though dissenting in some particulars from its estimates. It should be said, in passing, that the company throughout the inquiry has evinced a most commendable willingness to assist the Commission with all the information in the company's power. On page 237 of the Printed Testimony, Mr. Hayward describes in detail the process of making the "check inventory" of the company's property. The company's real estate was appraised by real estate experts in the several places where this property was located. Having obtained a complete inventory of the rest of the company's property in the state, cost units were applied to that property at such prices as prevail for current construction and supplies. A single exception appears to have been made for copper which was taken at sixteen cents per pound. To these basic estimates of

reproduction cost were added certain corrective percentages. These corrections included "traffic engineering," a portion of "executive expense," omissions and contingencies, and interest at six per cent. over an equated period of ten months, or 5 per cent. flat for interest. Mr. Betts, in his report to this Board (Printed Testimony, pp. 418, 419), summed up the overhead charges as follows:

Engineering and supervision.....	6.49%
Contingencies and omissions.....	3.00%
Interest during construction @ 6% over an equated period of ten months.....	5.00%

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Making a total of..... 14.49%"

This figure should be compared with:

Wisconsin allowance of.....	12.00%
Forstall (Paterson Gas Case).....	15.40%
Randolph (Paterson Gas Case).....	20.00%
Connette (Queensboro Gas Case).....	18.00%"

(Printed Testimony, pp. 418, 419).

The corrective percentages, when applied to the appropriate plant items, resulted in a total replacement figure which Mr. Hayward put at \$6,029,100. This is his estimate of replacement cost new. We do not, at this point, stop to canvass the estimate, as we are here intent simply upon a brief exposition of the company's contention. To the \$6,029,100, plant replacement figure, the company adds for other plant assets, including working capital, supplies, furniture and fixtures, tools and vehicles, and the Camden fire alarm a sum of \$258,800, making an aggregate sum of \$6,287,900 for plant and associated physical assets.

The company claims that in addition to the estimate placed on physical property, a sum representing the cost of establishing the business should be added. This sum is obtained upon a rather complicated hypothesis. It is assumed that four years would be the shortest period possible in which to build the present plant, organize the staff, and enlist the present number of subscribers. The cost of establishing the business would also

include interest and operating expenses during the four-year period of development so far as these expenses are not returned out of the company's revenues in said period. Allowance is made so that the "interest item shall not include the allowance already for interest in the estimate of reproduction cost of the physical plant." In Exhibit 11, these items are set down as follows:

Organization and development.....	\$ 152,000
Selling service .....	159,500
Interest and operating expenses during development .....	1,177,500

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1,489,000

Less interest during construction in- cluded in replacement value of plant and Camden Fire Alarm .....	304,400
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Total net cost of establishing business. 1,184,600

In short, the company claims itself entitled to earn on a base comprising:

I. Plant and Plant assets .....	6,287,900
II. Establishing Business .....	1,184,600

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Total ..... 7,472,500

On this base of \$7,472,500 the company claims itself entitled to a regular net return of eight per cent. per annum; and (until a sufficient surplus fund be accumulated to secure a stable 8 per cent. annual dividend) a return of ten per cent. on the base aforesaid. On page 48 of the Printed Testimony, Mr. Swayze, of counsel for the company says:

"We will ask that this Commission allow us to have such rates as will provide a reasonable return and that the base upon which the return shall be calculated shall be the reproduction value, new, of the property, not deducting anything for deterioration and adding to the reproduction value of the physical property the cost of establishing and building up a business with the same facilities and the same number of subscribers and the same

schedule of rates that now exist in the territory of the Delaware and Atlantic Company in New Jersey. The rate of return that we will ask for will be eight per cent. and beyond that rate of return we claim that we are entitled to an additional allowance of two per cent. to be accumulated as a surplus in order to provide stability in dividends."

Without discussing here the figures claimed by the company to represent (1) the reproduction cost of their physical property, and (2) the cost of establishing their business, the abstract character of the company's claim requires some preliminary analysis. Granting that a public utility is entitled to a fair return on the fair value of its physical property used and useful in rendering service to the public, is such a public utility entitled in addition to earn a return upon an estimate of the cost of establishing their business? Second, should the reproduction cost be taken of the company's property *new*, or of the company's property as it now stands, somewhat aged, on the date of appraisal, as the property base on which to allow a fair return? We shall take up these two general questions separately for discussion.

It is a truism that in valuations for rate-making purposes no simple, uniform rule applicable to all cases exists. On the other hand the general principles which underlie all just valuations for rate-making purposes are simple. These great general underlying principles are two in number. The first aims at securing for consumers generally a prompt and adequate supply at reasonable rates, of those services which they require of public utility companies. To ensure this end a sufficient incentive must be held out to enterprisers and investors. Such an incentive is the assured prospect of a sufficient return upon outlay in supplying service. This first general principle is prospective in its reach; it looks to the future. It is comprehensive in its aim; it is bent on attaining the adequate supply of community wants.

The second general underlying principle seeks to conserve the legitimate value of investments in public utility enterprises. It regards the past rather than the present;

the individual investors rather than the community of consumers. It is perfectly consonant with the first general principle enunciated. For unless the legitimate value of past investments is preserved by rate-making decisions, the effective incentive for individuals to take similar risks in future is impaired or extinguished.

In the light of these two general principles, it appears just and reasonable that a fair present day estimate of the capital necessarily and judiciously sunk in establishing the business and not thereafter recouped from revenue should enter as an element into the base upon which a fair return should be allowed. Not to include such part of the outlay or investment as is necessarily and judiciously made at the start in canvassing for and enlisting customers, or as is necessarily and wisely incurred by reason of foregoing returns during the construction period when money is locked up, acts to repel future enterprisers from similar ventures. Not to allow a fair return on such outlay, when made, is to extinguish in part the value of the necessary investment requisite to afford service to the community as a whole. The allowance on this score must, it is true, be made with circumspection. Living consumers must not be held in the power of the dead hand stretched forth from the grave of fictitious or injudicious investment. Cognizance must be taken of the fact that the individual merchant ordinarily calculates his percentage of profit on his stock, not on his stock plus the good will of his business. Cognizance must be taken also of the fact that an estimate of reproduction cost reflects in part the value attributed to a mechanism whose end is assumed to be the rendering of specific services, and not to become a mere pile of potential junk. But when all is said by way of abatement or allowance, the inclusion of a proper estimate for the cost of establishing business, a cost quite distinct from the bare structural value of the apparatus, cannot be gainsaid.

The second contention of the company relates to the company's physical property. The company has strenuously insisted that, so far as its property is concerned, the base upon which it is entitled to a fair return, is "the

reproduction value, new, of the property, not deducting anything for deterioration \* \* \*." (Mr. Swayze's statement in Printed Testimony, p. 48). This raises the explicit issue whether cost of reproduction of property should be taken as cost of reproduction of the property as brand new, or that cost diminished by an estimate for such deterioration in value as the property has undergone at the date of the appraisal.

Assuming that proper allowance has been made so far as intangible property is concerned, it is urged that a utility should be allowed to earn on the replacement value new of its tangible property. This is urged on the following grounds: first, to replace the tangible property would require an outlay equal to replacement cost new; second, even where some part of the service value of tangible property has expired, the service being rendered to consumers, both in quality and in extent, is the same as would be rendered by tangible property of the same dimensions if said tangible property were brand new; third, the expired service value of tangible property, when due to insufficient gross revenue in the past, represents a real cost of establishing the business, and thus a proper addition to previous allowance for intangibles.

On the other hand, it is urged that a utility, so far as its tangible property is concerned, is entitled to a return only upon the unexpired service value of said tangible property: first, because the unexpired service value of tangible property represents the entire present investment in tangible property; second, because the expired service value of tangible property has in the past either been returned to investors in the guise of dividends, in which case they are not entitled thereafter to earnings on said expired service value; or if expired service value in the past has not been returned to them in the guise of dividends, there is implied an ill judged investment outlay on their part, as proved by the fact that past revenues have been insufficient to reimburse investors therefor.

The considerations adduced in the preceding paragraph fail to take due cognizance of the fact that a public

utility lies under a peculiar obligation not similarly incumbent upon the ordinary business concern. This obligation consists in the continuous requirement of putting back into the tangible equipment such items as are necessary from time to time to afford to consumers service in quality and extent equal to the service which could be afforded by a brand new plant of the same magnitude. This obligation to replace said items does not allow the public utility to obtain the funds therefor from increased rates or charges, nor from the issue and sale of additional securities. \* \* \* The magnitude of the utility's responsibility is therefore the sum of the unexpired service value of tangible property *plus* the pecuniary liability to make replacements as needed from its own pocket. As its responsibility is measured by a sum in excess of the unexpired service value of its tangibles, it would seem to us that the equitable base upon which it is entitled to a return is in excess of the unexpired service value of its apparatus, and approaches as a limit the total replacement cost new of its tangible property.

On the other hand, it would appear that an allowance of replacement cost new of tangibles as the base on which a return is to be allowed (so far as tangible property is concerned) might in certain circumstances be excessive. In comparison, for example, with a utility which has to-day in its plant tangible property of a service value equal to the service value new of its original investment in tangibles, or which has accumulated a fund sufficient at any time to replace in full the expired service value of its tangibles, the utility which has done neither of these things but simply lies under the naked obligation to make such replacements as required, is less meritorious and is deserving of somewhat less allowance in the base for return. There is a greater assurance in the latter case than in the former of prompt and adequate addition of needed items when without such additions a service of 100% efficiency would be lacking. A public utility whose tangible property has a less

service value than when its tangible property is brand new and which has not been earning enough to pay dividends, and which has no accumulated surplus, and whose stock is full paid and non-assessable, could in certain circumstances only with the greatest difficulty, and in other circumstances not at all, put back into its tangible property the items as required. Furthermore, the utility whose tangible property, or whose tangible property plus its depreciation fund, have not fallen below replacement cost new affords a guarantee that its original outlay was fully warranted by the needs of the community it serves. This certainly would be the case where in addition to maintaining the value of its tangible property intact, it has also paid reasonable returns to its investors. For both reasons, it would seem unfair to the company, whose tangible property shows no decline from replacement cost new, that it should be allowed a return upon a base no greater than the base on which returns are allowed to a similar utility of equal magnitude, the service value of whose tangibles shows a shrinkage away from their replacement cost new.

While therefore it may be only a first approximation to justice in distinguishing between utilities of the two contrasted classes, a deduction in the case of the less meritorious or less capably projected utility may well be made. Where such deduction is moderate in extent, and serves only to cover such expired service value as has resulted demonstrably from age and wear, we are of opinion that said deduction may fairly be made. While we are not confident that in the Knoxville Water case the Supreme Court of the United States had before it any record of each and every consideration properly to be considered in the matter of making deductions from the replacement value new of tangible property, it is tolerably clear that this deduction or abatement here proposed is wholly in keeping with the valuation rule that seemingly may be deduced from that opinion. Such abatement or deduction is only a fraction of the total expired service value of tangible property in this particular case. This moderate reduction has also this



advantage: that it is based upon certainly ascertained inspection or investigation, and not upon the more or less conjectural allowances for depreciation estimated by tables purporting to give the expectation of life of various parts of the utility's plant. Moreover, it must be added that the annual allowance for depreciation from now on into the future should properly be based upon the percentage estimated of reproduction cost new.

In the case at bar, it would make no difference, so far as the disposition of the pending case is concerned, which basis for a return is chosen. On the basis of reproduction value new, or upon the basis of an abatement such as is contemplated in the Knoxville case, or on the basis of such deduction as might be calculated upon expired service value estimated from life tables, it is demonstrable that the past returns to this company have not been excessive, unjust or unreasonable.

It must be noted that by virtue of the now prevalent regime of regulation with prescribed accounting provision for adequate depreciation, utilities will be regarded henceforth as coming under the requirements of continuous operation: that is to say, from now on the utilities will be expected to maintain intact the present value of their capital investment. When therefore rates of depreciation are estimated in accordance with due and proper allowance therefor as provided in the statute, the sums standing to the credit of the depreciation reserve will be deducted from the total value of assets to ascertain theoretically the base on which utilities be entitled to a fair return.

Later on in this report, we have estimated as Base A, the replacement cost new, Base B, the cost new less allowance for ordinary wear and tear; and Base C, the cost new less the full amount of the segregated accrued depreciation.

This vexed question of the proper base on which to allow a return, so far as tangible property is concerned, it is not necessary to decide in the case at bar; and we will not prematurely commit ourselves irrevocably upon this point, save that we are strongly of opinion that

where the past financial history of a utility discloses the fact of an investment made unduly in advance of community needs, and thereby giving rise to depreciation uncovered, an adequate deduction therefor ought to be made. This amounts to what in essence is a corporate deficit which should be distinguished from unearned depreciation deserving of ultimate recognition and incorporation in the property base on which to predicate just earnings in future.

#### *A. Plant and Plant Assets.*

In determining the base upon which this company is entitled to earn a return, we have considered all relevant evidence we could obtain. Many of the aspects of value which properly may be considered in such a case are enumerated in *Smyth vs. Ames* (169 U. S. 466) and in subsequent rate cases that have been decided by the Supreme Court of the United States. Other things equal, a fair base on which to compute a return for a public utility seems to be the present value of the investment. In this case the company's inventory and appraisal of its property furnishes in the first instance, an estimate from which to obtain the present value of the various items. We are not bound, of course, by these estimates except as they approve themselves upon inspection. The matured opinion expressed thereon by the Board's Engineer has received our careful consideration, but the inventory and appraisal and the evidence relating thereto, we have used as guides in determining the proper figures to be placed upon the property in detail and as a whole. Of necessity, such an appraisal is in large part a matter of judgment. We shall first canvass the items constituting the appraisal of the plant in this State.

##### *(a) Land.*

The valuations attached to the company's land are as follows:

- (1) Land as per auditor's books, August 31st,  
1911 .....\$ 46,300
- (2) Land replacement value claimed by the  
company ..... 101,800
- (3) Land, (Auditor's books corrected by the Co.

to include traffic engineering, executive expense and thirty months' interest during construction) .....	60,600
(4) Land, as appraised by local real estate experts engaged by the company (except for Mt. Holly and Penn's Neck, where auditor's book value is taken) .....	83,166

As appears from the New Jersey inventory made by the Delaware and Atlantic, the replacement value claimed by the company is obtained as follows:

To the appraisal figure in (4) <i>supra</i> of.....	83,166
There is added for engineering expense.....	1,381
There is added for executive expense.....	1,395
There is added for contingencies and omissions.	2,965
There is added for interest at 6 per cent. per annum on \$83,166 during 30 months assumed to elapse between payment of purchase money and the time operation begins from the build- ings and plant to be put on said land.....	12,891

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\$101,798

The overhead charge added to the \$83,166 is therefore \$18,632, or over 18 per cent. of the realty expert's appraisal of the land at the time of the appraisal. The theory upon which this is worked out by the company is that in ordinary construction work a certain amount of the company's total executive and engineering expense should be added to the prime cost of labor and materials, etc; that an allowance for contingencies and omissions should similarly be added; and that the interest foregone on money locked up in construction during the period of construction should be accounted as a part of the cost of the specific job. Without denying the legitimacy of such overhead charges for ordinary construction work done by the company we believe that in the case of land, each parcel being purchased as an entirety—this process of valuation should be replaced by an appraisal by competent experts of the land as an

entirety as of the date of the inquiry. The essential purpose of computing, in some detail, construction costs of particular pieces of apparatus is to arrive at their present aggregate value.

This is just what is found by obtaining competent expert judgment of the present value of the land, and by comparing therewith any other relevant evidence. The figure so obtained may fairly be taken as the present value; and any forced and recondite assimilation of valuing land with valuing piece-meal construction of apparatus is erroneous.

How little applicable is such an overhead charge as engineering, or what the company commonly terms "traffic engineering," appears from the company's "New Jersey Inventory" under "Corrective Factors" where in distributing this item of overhead expense, 6 per cent. thereof is allotted to buildings, 52 per cent. C. O. Equipment, and 42 per cent. to wires, cables, etc., leaving no per cent. at all to be added as an overhead charge on land.

Similarly the overhead charge of 1.65 per cent. by reason of executive expense is unwarranted. The error here is one of false analogy. Continuous construction work involved some tax on the time and energy of executive, financial, and accounting officials of a company. It may perhaps come to 1.65 per cent. of the cost of such work yearly. But a similar augmentation of the replacement cost of seven parcels of land on the ground that the seven parcels impose a burden on these officials, the weight of which burden is proportioned to the land's aggregate value is pushing an analogy into the ground.

The heaviest of all these overhead items with which the company would augment the replacement cost of its land is the 15 per cent. addition to the land's present total value as fixed by appraisers of the company's selection. As said before, if expert and impartial appraisers substantially agree on the value of the company's land at present, such estimate includes within itself all allowances that can fairly be asked. Whatever the causes, the correct

present day valuation of the land sums up all of the factors, positive and negative, which have gone to determine the land's total value.

Of all these overhead charges, the only one applicable is contingencies and omissions. It is at least possible that the expert appraisers have not included in their estimate legal expenses, costs of searches, title insurance, or brokers' fees. For this we allow three per cent.

We arrive finally at the following valuation of the company's land. The company's appraisers (and the Auditor's books for Mt. Holly, \$5,000; and Penn's Neck—\$300) make a total of \$83,166. The Printed Testimony, p. 426, shows that the East State Street lots in Trenton were to be appraised, the company assenting, at \$45,000 instead of at \$51,166 as by Mr. Holcomb's appraisal. Deducting the difference, or \$6,166 from the total of \$83,166 leaves \$77,000. Adding 3 per cent. for omissions and contingencies gives \$79,310, as the present fair value of the company's land on which we think they are entitled to earn a fair return. This value of \$79,310 exceeds the value of land on the Auditor's books by over \$33,000. It exceeds by \$18,700 the company's calculation of what the Auditor's books ought to show if cost figures were augmented by overhead charges for traffic engineering, executive expense, and two and a half years' interest during construction. It exceeds very substantially the sums at which the land is assessed for taxation. In Trenton, for example, the tax assessment of the land is \$35,800; the valuation on which earnings are here allowed is \$45,000. Printed Testimony pp. 406 and 407 will show that on real estate, including certain buildings, the company's tax assessment was on a value of \$60,825, whereas their submitted estimate of replacement cost on the same real estate was \$145,961. Without contending that tax assessment value should be identical with values fixed for rate making purposes, we believe the comparison will aid in substantiating the valuation we have made of the company's land of \$79,310.

(b) *Buildings.*

The Buildings stood on the Auditor's books on August

31st, 1911, at \$103,200. Mr. Hayward testified that this is probably the correct figure of actual cost of construction as "the buildings were taken under contract" (Printed Testimony, p. 249). The replacement value claimed by the company is \$139,900. The Auditor's books corrected for overhead charges would make the figure stand at \$117,400. The Replacement cost estimate is \$22,500 in excess thereof. This is due to the fact that the price of building has gone up at the rate of 2.3 per cent. per year for the last twelve years. (Printed Testimony, p. 247). If buildings were to be erected new, they would probably be fire-proof in construction and more costly (Printed Testimony, p. 240). By reference to page 308 of Printed Testimony it will be seen that the company reduces its replacement estimate by \$1,500, thus making the replacement estimate to stand at \$138,400. The company's estimates for replacement cost new, as of August 31st, 1911, of the various items is as follows:

*Plant:*

Land .....	\$101,800
Buildings .....	139,900
C. O. Equipment .....	524,100
Sub-Licensee C. O. Equipment .....	2,000
Station Apparatus .....	333,200
Installations .....	125,600
Service Wires .....	178,900
Sub-Licensee Station Apparatus .....	5,500
Pole Lines .....	1,095,900
Aerial Wire .....	833,200
Aerial Cable .....	310,700
Underground Conduit .....	1,242,300
Underground Cable .....	715,300
House Cable .....	2,300
Submarine Cable .....	46,100
Right of Way .....	372,300

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Total .....\$6,029,100

*Other Plant Assets:*

Working Capital .....	150,000
Supplies .....	53,300
Office furniture and fixtures ..	6,200
Tools and Vehicles .....	26,300
Camden fire alarm .....	23,000

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258,800

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Total Plant and Plant Assets .....\$6,287,900

These items as fair estimates for replacement costs, *new*, we allow, except as indicated under the following headings.

(1) Under C. O. Equipment, deduction should be made for "Construction in process" amounting to \$34,800. This latter figure is found in the inventory submitted to the Board's Chief Inspector as the basis for the company's estimates. C. O. Equipment in process of construction as of August 31st, 1911, was not property then used or useful in serving the public. On it the company, as of said date, is not entitled to earn a return. The reduced estimate for this item is therefore \$489,260.

(2) Under Pole Lines, two items of \$6,068 and \$1,646 for "Construction in process" are noted in the company's inventory underlying its estimates. For reasons adduced *supra* they should be deducted. The corrected estimate of this item stands:

Exchange Pole Lines .....	\$ 576,022
Toll Pole Lines .....	512,117

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Total Pole Lines .....\$1,088,139

(3) Under Aerial Wire, an item for "Construction in process" of \$786 should come out, leaving the item to stand corrected at \$832,372.

(4) Under Aerial Cable, an item for "Construction in process" of \$19,961 should be deducted, leaving the item to stand corrected at \$290,739.

(5) Under Underground Conduit, an item for "Construction in process" of \$30,877 should be deducted, reducing this item to \$1,211,423.

It is to be noted that the company in their estimate

of replacement cost, *new*, of conduit have included the expense that would be required in cutting and replacing pavements *if the work of laying conduit were to be done to-day*. Mr. Hayward, Engineer of the Bell Telephone Company of Pennsylvania and associated companies, testified:

"The conduit figure, in my estimate of replacement, is \$142,500 higher than the auditor's book value, and that difference is due wholly to this paving item, that is, the paving that exists now is of a higher grade than the paving that was placed at the time the conduit was built." (Printed Testimony, p. 271).

In other words, when the conduit was laid, the company paid for cutting and relaying paving that was replaced subsequently with more substantial paving by the municipalities. In the company's estimate of cost of replacement, the cost of cutting and relaying the present more substantial paving has been taken. This, it is contended, would be the cost of replacement to-day. On the other hand it is apparent that, if this basis for estimating replacement cost be adopted, every expenditure made by a municipality for more substantial paving will act automatically to enhance the basis on which the customers of a public utility would have to pay rates. They would first pay the taxes for the improved paving, only to find that they are expected thereafter to pay higher rates for service for structures under the paving.

For the company the contention is made that this enhanced replacement cost of conduit is analogous to the appreciation in value of the company's land. It is the present enhanced value of land on which the company is entitled to earn. Similarly, it is argued, it is the present enhanced replacement cost of conduits on which the company is entitled to earn a return. The doctrine of present replacement cost may easily be pressed to an absurd extreme. Certainly cognizance may be taken of the fact that tax-payers' expenditure, not outlay by the company, has enhanced the estimate replacement cost of particular items.

It might seem at first that some allowance should be



made to the company because of this saving effected by careful foresight, but we must not lose sight of the fact that the customers of the company are called upon just that much earlier to provide a return on an investment in conduit not actually needed until a later time.

We are therefore not justified in allowing any part of the sum of \$142,500 which would now be required to assist in paying the replacement cost of paving over conduit. The replacement cost, new, for conduit will therefore be \$1,068,923.

Appended hereto (Exhibit A) is an estimate made by the Board's Chief Engineer showing that this anticipatory laying of conduit in advance of paving netted the customers generally a slight loss rather than a gain. At the hearing of July 23d, 1912, Mr. Hayward estimated the company had served by such anticipation the sum of \$64,000. (Transcript of Evidence, pp. 15, 16).

(6) Under Underground Cable, two items for "Construction in process" must be deducted. The two items found in the company's inventory are:

Exchange U. G. Cable .....	\$43,661
Toll U. G. Cable .....	722

Total .....	<u>\$44,383</u>
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Making this deduction, replacement cost, *new*, of this item becomes \$670,917.

(7) Right of Way. As of August 31st, 1911, this item appears on the Auditor's books at \$113,400; and the company's estimate of replacement cost, *new*, is \$372,300. Deducting an item of \$400 for "Construction in process," we have a corrected figure for replacement cost, *new*, of \$371,900. The difference between the auditor's figure, representing actual cost as then computed, and the estimate of replacement, *new*, is very heavy. It amounts to \$258,500. In other words, this item is valued by the company at over three hundred per cent. of the original cost figures on the Auditor's books. The Company's Engineer also admitted on the stand that it was the most difficult one on which to put a replacement value (Printed Testimony,

p. 279). He ascribed the increase in great part as due to the likelihood that if the lines were built to-day fewer gratuitous pole locations would be granted (Printed Testimony, p. 281). Some evidence of actual costs in recent years was offered in support of this estimate. From the record we do not see that the estimate can be impugned with certainty.

(8) Under other Plant Assets we reject the Camden Fire Alarm estimate wholly. This was installed and is partly maintained by the company as payment for privileges obtained in Camden. We do not see that this properly enters into the base on which the company should be entitled to a return from users throughout the state. Allowance for obtaining franchises is separately made under another head. This item is essentially the cost of obtaining Camden franchises. To allow it separately would involve the error of double counting. Moreover, it is fairly excluded because it is not property used or useful in rendering telephone service. To charge its upkeep upon the consumers generally in this whole district is therefore manifestly improper.

The subjoined table presents the company's estimate of cost of replacement, *new*, as of August 31st, 1911, and the corrected replacement cost, *new*, as indicated above.

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Plant	Company's Estimate of Replacement, New	Corrected Estimate of Replacement, New
Land	\$ 101,800	\$ 79,310
Buildings	139,900	138,400
C. O. Equipment	524,100	489,260
Sub-Lic. C. O. Equipment	2,000	2,000
Station Apparatus	333,200	333,200
Installations	125,600	125,600
Service Wires	178,900	178,900
Sub-Lic. Station Apparatus	5,500	5,500
Pole Lines	1,095,900	1,088,139
Aerial Wire	833,200	832,372
Aerial Cable	310,700	290,739
Underground Conduit	1,242,300	1,068,923
Underground Cable	715,300	670,917
House Cable	2,300	2,300
Submarine Cable	46,100	46,100
Right of Way	372,300	372,300
	<hr/> 6,029,100	<hr/> 5,723,960
Other Plant Assets		
Working Capital	150,000	150,000
Supplies	53,300	53,000
Office Furniture, etc.,	6,200	6,200
Tools and Vehicles	26,300	26,300
Camden Fire Alarm	23,000	0
	<hr/> \$6,287,900	<hr/> \$5,959,460
Total		

We find the company's investment in Plant and Plant Assets, measured by a fair estimate of replacement cost, *new*, as of August 31st, 1911, to be \$5,959,460.

Our figure of replacement cost, *new*, is \$5,959,460, as against \$6,287,900 claimed by the company. Our lower figure is due to the different basis on which we estimate the replacement cost, *new*, of land; to our rejection of items for "Construction in process"; to our rejection of the estimate for cutting the present heavier pavements; and to our exclusion of the Camden Fire Alarm apparatus

altogether. This base for Plant and Plant Assets would therefore be \$5,959,460 (Base A).

It remains to find what deduction, if any, ought to be made from this replacement figure, *new*, of \$5,959,460 by reason of accrued depreciation. The supplementary hearing of July 23d, 1911, was called partly to obtain data on this subject. One of the topics submitted to the company in advance, for answer, was:

"The figure or estimate to be put on the total accrued existent aging of the Plant and other Plant Assets of the Delaware and Atlantic Telegraph and Telephone Company, as of August 31st, 1911."

The company made answer, by Mr. Hayward. The query above quoted was interpreted, perhaps rightly, as referring exclusively to the depreciation accrued *by reason of wear and tear*. This depreciation was estimated by the company to amount to between \$500,000 and \$600,000. This might be taken as the best measure of "depreciation by inspection" (Transcript of Evidence, July 23d, 1912, pp. 43, 45). This figure does not include depreciation resulting from the growing inadequacy of plant, from its increasing obsolescence, or from the inevitable disuse of parts of the apparatus by reason of approaching municipal regulation; nor does it include any depreciation upon Right of Way, although Exhibit 49 shows that the company estimates a four per cent. annual depreciation upon this item. Clearly ten per cent. of the replacement value, *new*, of the items listed by the company on pp. 41, 42 in Transcript of Testimony of July 23d, 1912, is the very minimum figure that could be attached to accrued depreciation. Deducting a medium figure of \$550,000 for depreciation ascertained by inspection would give, as a base for Plant and Plant Assets on which to calculate, a return of \$5,409,460 (Base B).

A third method of obtaining a base for Plant and Plant Assets is found by deducting theoretical depreciation based on tables of expectancy of service. Some rough estimate of the total accrued theoretical depreciation may be made, if we tentatively combine the annual depreciation percentages on various items as calculated by the

company in Exhibit 49 with the estimated years in service of the same items as estimated by the company, in the table on pp. 41, 42, Transcript of Testimony of July 23d, 1912. If these two items are multiplied one by the other, we get the following indication of accrued theoretical depreciation:

PLANT ITEMS	Revised Estimate of Replacement Cost New	Average Years in Service	Annual % Deprecia- tion	Accrued Deprecia- tion
Buildings	138,400	12.2	2.5	42,675.60
C. O. Equipment	489,260	5.15	10.0	251,969.00
Sub. Licensee do.	2,000	3.	10.0	600.00
Station apparatus S. A. proper	232,200	4.5	10.0	104,490.00
P. B. X. No. 1	86,300	4.0	10.0	34,520.00
P. B. X. No. 2	9,400	1.75	10.0	1,645.00
Booths, etc.	5,300	4.	10.0	2,120.00
Installations	125,600	4.	2.5	12,560.00
Service Wires:				
Drop Wires	130,100	5.	9.5	61,798.00
Block Wires	48,800	2.	9.5	9,272.00
Sub Lic. Sta. Apparatus	5,500	3.	10.	1,650.00
Pole Lines				
Ex. Pole Lines	576,022	5.	10.	544,069.00
Toll Lines	512,117	8.	6.25	544,069.00
Aerial Wire	832,372	5.83	5.3	257,203.00
Aerial Cable	290,739	3.7	6.54	70,359.00
Underground Conduit	1,068,923	5.	2.7	144,304.00
Underground Cable	670,917	3.	4.18	84,133.00
House Cable	2,300	3.	5.8	400.00
Submarine Cable	46,100	6.	11.0	30,426.00
Right of way	372,300	5.13*	4.0	76,396.00
<b>TOTAL</b>				<b>\$1,730,589.60</b>

\*The average life of apparatus as a whole is here assumed as the years in service of Right of Way.

Working capital	\$150,000			None
Supplies	53,000	1		Not included
Office furniture, etc.	6,200	5	12.9	4,000
Tools and Vehicles	26,300	2	5.0*	2,630
Camden Fire alarm	rejected			Not included

\*Assumed; no evidence in the record.

The total accrued theoretical depreciation amounts to \$1,730,589.60. The total estimated replacement cost, *new*, of the Plant and Plant Assets (excluding Land, Working Capital, Supplies and Camden Fire Alarm) is \$5,677,150. The accrued depreciation indicated is approximately 30 per cent. of the total depreciable items.

From this table, which is, of course, merely indicative, it would appear that the accrued depreciation would rise as high as thirty per cent. of Plant and associated Plant Assets of a depreciable character.

Another angle of approach is offered by the company's relative allowances to cover repairs (current maintenance, etc.,) and depreciation proper (deferred maintenance). Mr. John C. Nowell, Plant Manager, testified (Printed Testimony, p. 353) that "Maintenance account, which represents the cost of keeping the plant up to its original value, is divided into three main classes of charges, namely, those designated as repairs, those designated as station removals and changes, and those chargeable to the depreciation reserve." Based on actual expenditure in the first six months of 1911, these made a total of ten per cent. of the value of the plant. This charge he subdivides as follows:

Depreciation Reserve	6.00 per cent
Repairs	1.88 " "
Station Removals and Changes	.90 " "
Taxes	-.81 " "
Insurance	.05 " "
Use of Other Plant	.02 " "
Rent of Conduit, Pole and other Space	.33 " "
<b>Total</b>	<b>9.98 " "</b>

From this it would appear that the anticipated shrinkage in value of plant which current outlay on maintenance cannot prevent is greater than the anticipated shrinkage in value which current outlay upon repairs, etc., can overcome. If we assume, on the basis of six per cent. for depreciation, as against 2.78 for current repairs, that it is twice as great per annum, it might be concluded that the aggregate of accrued depreciation is roughly twice as great as the aggregate accrued depreciation coming from wear and tear alone. But this last is estimated by the company, as of August 31st, 1911, to be roughly ten per cent. of the value of the plant.

This is an admittedly rough approximation, but the record discloses no estimate of total accrued depreciation, and the company's estimate for wear and tear is between wide limits, \$500,000 to \$600,000. At the hearing of July 23d, 1912, (p. 47) Mr. Hayward was asked:

"Have you given any consideration as to how this percentage (viz. 10 per cent. due to wear and tear alone) would be augmented if these other elements of inadequacy and obsolescence had been brought into the calculation; did you extend your speculation to that?"

He replied:

"No, sir, because I was dealing with aging, and I didn't see how they affected aging in any way. Obsolescence has no function until obsolescence exists. Obsolescence is something preparatory to obsolescence."

Mr. Swayze, counsel for the company, at the same hearing (pp. 45, 46) explained that "aging is accepted by experts to mean wear and tear," and that the company's estimate was confined to these elements alone.

From the foregoing consideration, it appears to us that if twenty-five per cent. of the estimated replacement cost, *new*, of Plant except Land, and of the appropriate associated Plant Assets, were taken to cover the entire accrued depreciation as of August 31st, 1911, the estimate would be a conservative one. For purposes of reaching a hypothetical present value of Plant and the appropriate associated Plant Assets, we shall proceed on this supposition. We assume as undepreciated

Land, valued at	79,310
Working capital at	150,000
Supplies	53,000

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\$282,310

Deducting this amount from \$5,959,460, or the total revised estimate of replacement cost, *new*, we obtain \$5,677,150. Twenty-five per cent. of this latter amount is \$1,419,287, which we consider is a fair estimate of the total accrued depreciation. On this basis, the present

value of the depreciable Plant and Plant Assets is \$4,257,863. Adding the undepreciated items (\$282,310) we obtain \$4,540,173 as the present value of Plant and Plant Assets. This figure, \$4,540,173, is a third base for Plant and Plant Assets on which to calculate a return (Base C).

*B. Establishing Business.*

The company contends that the base upon which it is entitled to earn is the sum of the value of its physical property (Plant and other Plant Assets) and the value put upon "Establishing Business."

We have noted earlier in this decision the general propriety of a due allowance for this second item. The more difficult question is to affix a fair money value thereto.

The company, under the head of Establishing Business, lists the following items with valuations annexed:

(1) Organization and Development	\$ 152,000
(2) Selling Service	159,500
(3) Interest and Operating Expenses during development	1,177,500

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TOTAL (Gross)	1,489,000
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Less interest already included in replacement cost, new, of plant, etc.	304,400
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Net estimate of cost of establishing the business	1,184,600
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The method on which this estimate of the company is founded is as follows: (a) Organization and Development are calculated at 2.5 per cent. of the replacement cost, new, of the Plant, Tools, Vehicles, and Camden Fire Alarm. This is 2.5 per cent. of the company's replacement figure of \$6,287,900 less working capital and supplies (Printed Testimony, p. 290). (b) Selling Service is based on an average cost of \$3.74 per station multiplied by total number of stations. To this sum 20 per cent. additional is added because of the estimated greater expense if contracts for the entire number of stations had to be obtained in a limited period of four years (Printed Testimony, p. 290). (c) The item for Interest and Operating Expenses during Development is based upon an



exceedingly complicated hypothesis set forth on pages 291 to 300 of the Printed Testimony, and is illustrated by numerous exhibits, notably Nos. 12 and 12½.

The essential part of the company's estimate of the replacement cost of establishing business depends on this hypothesis. This hypothesis demands analysis. It is assumed that the plant was built and the business established in a four-year period; that various outlays for thirty-one different purposes (see Exhibit 12½) were made at different times within this period; that subscribers were gained at a certain rate; that revenues and operating expenses grew in certain assumed proportions, producing first operating deficits, and finally surpluses over operating costs. It is assumed that money invested during this period was entitled to earn at 8 per cent. annually compounded for the four years. Such hypothetical aggregate outlay so far as not offset by the hypothetical revenues, (nor previously counted in the interest on plant during construction) yields the company's figure of \$1,184,600 as the replacement estimate, net, for interest and operating expenses owing development.

We do not criticize the company for devising this plan of estimating the greater part of the replacement cost of "Establishing Business." It is ingenious, and is worthy of close study. Various other methods for computing what is known as "Going Value" seem inferior to it in certain particulars. But while some of the well-founded assumptions involved are admissible and even indispensable, we are not able to accept it as an entirety. It involves a set of hypotheses, perhaps not far from what would actually be done, should occasion arise to reproduce such a plant and system in the short term allowed. From its elements, however, we shall assume (1) that to build a physical plant of equal dimensions, with this of the Delaware & Atlantic, four years at least would be required. This is the judgment of Mr. Hayward and Mr. Spalding (Printed Testimony, pp. 291, 154). We shall also assume (2) that on a venture of this character eight per cent. is a fair return. Our reasons for this we shall set forth later under the rate of return. We shall also

assume (3) that the profits necessarily foregoing during this four-year period of building the plant are offset to some extent by an operating surplus during the last year of the construction period. We assume this offset to be equal to half the annual eight per cent. return on the final value of the plant. This last assumption is admittedly arbitrary; but the company in their Exhibit 12 allow operating surpluses for the last two years of the hypothetical four-year period, aggregating something like \$395,000 against a figure of \$250,000, used by us as representing half the annual eight per cent. return on the final value of the plant. If eight per cent. annual return is what the company claims to be entitled to, during construction, in the last year of this period, they should be able to earn net about half of that sum, if they have made a judicious investment.

In reckoning the cost of developing the business we must take as our base of comparison the cost to reproduce the plant, *new*, not its present value. Our reason for taking the larger figure is that the existing plant is more extensive than could be built by an outlay equal to its present depreciated value. The corresponding initial loss incurred would be proportioned to the replacement cost, *new*, of Plant and Plant Assets.

On these assumptions we estimate the cost of developing the business as follows: The plant new, when complete after four years, deducting for construction in process, will be valued at \$5,959,460. As the outlay starts with zero and finally reaches \$5,959,460, the equated investment will be roughly \$2,979,730. On this equated investment eight per cent. profit annually is foregone for four years. This profit foregone compounded for four years would amount to \$1,079,465. The interest which is calculated on the building of the plant, and which is included in the value of the plant, completed amounts to \$304,400. This amount offsets in part the profit foregone to an equal amount. The estimated operating surplus for the last year of the four-year period (which we assume to be equal roughly to one-half of the annual interest, during the last year of construction) comes approximately

to \$240,000. The profit foregone is then reduced to \$513,100. To this we add two types of expense not connected with the physical structure at all. These are the allowance for Organization and Development, including promotion expense, legal expense, advertising other than for custom, enlisting, drilling and educating the staff and similar incidentals. We note that similar allowances have been made upon expert advice in other cases by commissions. Dr. Jackson in the New England Telephone and Telegraph case, acting for the Massachusetts Highway Commission, it is testified, used a figure of approximately three per cent. Other similar allowances are cited in Transcript of Evidence of July 23d, 1912, p. 19, sq.

The Public Service Commission of the First District of New York (case No. 1305) said:

"There are certain expenses connected with every undertaking which are not represented by physical property, but which must be incurred before the undertaking is operated. Lawyers and engineers must be consulted. Permits must be obtained and paid for. Interest and taxes during the period of construction must be paid, and as there are no earnings, they must be included as part of the cost of the undertaking. \* \* \* In other cases decided by the Commission, where an estimate has been necessary, the amounts allowed for promotion of the original scheme, the securing of rights and permits, experimental operation, adjustment of system, preliminary legal fees and technical advice had varied from 5½ to 8 per cent. of the reproduction cost of the plant plus the cost of the land. \* \* \*"

We allow, therefore, the company's estimate under "Organization and Development" of \$152,000 to stand. We must also allow for the company's cost of selling service. In the *Pioneer Telephone and Telegraph Company vs. Westenhaver* (118 Pac. 354), the Court said:

"The more people a subscriber can communicate with over a telephone exchange, the more service, as a general rule, is such exchange to him; and it

is only when such exchange has subscribers that the property of the owner invested therein has an earning power. But subscribers are not obtained without expenditure of money, labor, and time during which the capital invested in the plant earns nothing and oftens fails to pay operating expenses. The customers must be connected with the system of the plant; trained employes must be obtained, and a system of operation must be established."

We allow the company's estimate except for the 20 per cent. additional arbitrarily added because of alleged greater cost of doing the work in so short a period as four years. The revised estimate is \$132,706.

Adding these two items, viz., Organization and Development, and Selling Service, to the previous estimate of the replacement cost of developing the business we make a total estimate for the fair replacement cost of establishing the business of \$797,800 as compared with the company's claim of \$1,184,600.

Combining the allowance we fix for establishing the business of \$797,800 with the three bases (A. B. C.) for Plant and Plant Assets, we obtain the three following bases on which to compute a fair return.

Base A	\$5,959,460
	797,800
	<hr/>
	\$6,757,260
Base B	\$5,409,460
	797,800
	<hr/>
	\$6,207,260
Base C	\$4,540,173
	797,800
	<hr/>
	\$5,337,973

### III. Rate of Return.

The company's contention is that it is entitled, if it can secure it, to a gross revenue which shall cover (1) operating expenses; (2) depreciation at 6 per cent. on the replacement cost less of the depreciable elements of

Plant and Plant Assets, and (3) a margin of profit equal to 10 per cent. on the base figure representing the fair value of its investment. This 10 per cent. is claimed only until such time as a surplus is accumulated that will assure a regular 8 per cent. margin of profit.

We are of opinion that the addition of two per cent. is not warranted, even temporarily. One purpose of an adequate depreciation allowance is to secure this very uniformity of net profits which the company desires to put beyond hazard. Where adequate provision is made for annual depreciation, unusual outlay in a given year for replacements is taken care of, without necessitating a drop in dividends.

A return of 8 per cent. on the fair value of the company's investments seems to us fairly equitable, when consideration of all conditions is taken. Especially as this return is to cover all such items as bond discount, brokerage or other costs of obtaining capital. The technical apparatus is still in process of change. The proper allowances for depreciation are still, of necessity, largely conjectural. Moreover, so far as this particular company is concerned, brisk competition is still offered in many parts of its territory.

An 8 per cent. annual return upon the lowest possible base, base C, \$5,338,000 is \$427,040. The earnings and expenses as given in Exhibits 8 and 8-A indicate that in 1908, the corporate deficit was augmented by \$198,085.56; in 1909 by \$43,123.97; that the net earnings for 1910 were \$160,756.32; and for 1911 were \$170,196.13. The disparity between the actual present earnings and a return of \$427,040 is so considerable that it is not necessary to consider in detail whether the company's estimate of earnings should not be somewhat reduced by reason of the royalty paid the parent company, by reason of possibly excessive prices paid to the Western Electric Company for supplies, by reason of possible inclusion in operating charges of overhead charges that should be deducted because of the inclusion of similar items in the capitalized estimate of various parts of the plant, and by reason of appreciation of parts of its property. The net profits at

present are clearly not excessive, but demonstrably moderate so far as this company is concerned. It follows that its rates as a whole cannot be assailed as undue or unreasonable, and that the petitions so far as alleging undue or unreasonable rates should be DISMISSED.

An order will be so entered.

Dated January 7th, 1913.

BOARD OF PUBLIC UTILITY COMMISSIONERS.

(SEAL)

(Signed) ROBERT WILLIAMS,  
*President.*

ATTEST:

(Signed) ALFRED N. BARBER,  
*Secretary.*

I hereby certify the foregoing to be a true copy of REPORT made and filed by the Board of Public Utility Commissioners at a meeting held Tuesday, January 7, 1913.

ALFRED N. BARBER,  
*Secretary.*

#### EXHIBIT A.

The total expenditure for conduit built in advance of paving amounted in the period under discussion, from November, 1907, to July, 1911, to \$104,037. If this work had been constructed at later times, the company would have been required to expend in addition the sum of \$64,537 for paving over conduits. It thus appears that the company has effected a saving in first cost chargeable to capital account of \$64,537. It should be noted, however, that by laying conduit in advance of paving, the interest charges at 6% for the period during which the conduit is not yet in use amounts to \$13,759.92. It might be entirely reasonable to charge to capital accounts this sum of money under the head of Interest During Construction. It does not appear to have been treated in this way, however, but to have been considered as part of the cost of the service, and under ordinary conditions would be collected from all of the subscribers of the company obtaining service at that time. Table I\* is found on page 17 of the testimony taken on July 23, 1912. Table II† is

\*See page 96 infra.

†See page 97 infra.

made up from Table I in order to show the amount of interest which would be chargeable because of conduit constructed in advance of the necessity for it. Table III\* shows the amount of interest chargeable under the actual conditions commencing such interest charge at the time the conduit was actually laid, and including only such paving as the company actually paid for. Table III also shows in column B the amount of interest which would have been charged if the company had in each case delayed the construction of conduit until it was needed. In that case the capital cost would have included the paving over conduits. Table III is merely illustrative of the results as no information is available with regard to conduit which has been laid or which may be laid in the period from July, 1911, to 1915, inclusive. Some little study of Table III, however, will show that the present method of placing upon the customers the burden apparently in excess of what they would be required to carry if construction of conduit was delayed until actually needed. Table III, it will be noted, shows that the total amount of interest actually due under the existing conditions from 1906 to 1915 is figured as \$46,032. The amount of interest chargeable if conduit construction had been delayed and paving actually paid for would have been in the same period \$54,459.82. The excess amount which would have been collected from subscribers is \$10,965.15. It should be noted, however, that this would be collected from subscribers requiring service during the somewhat later period taken as a whole. During the period under discussion, commencing as far back as 1906 and extending in the table until 1914, the subscribers of the earlier period have been called upon to provide a return of \$13,759.92, all of which is interest paid in advance of actual needs. It therefore appears that there has been paid in excess of what would be the case if investment were delayed until actually needed the difference between the two amounts named amounting to \$2,794.77. It should be again stated that these figures are merely illustrative, as no information is available with regard to construction in advance of needs during the period from

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\*See page 98 infra.

1911 to 1915. It should also be noted that the company has really had no choice in the matter as the company would not have been allowed to cut through the new pavements referred to, but was required by law, either State or local, to construct its conduit in advance of the laying of the pavement.

**ORDER.**

These cases being at issue upon complaints and answers on file, and having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report, containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof,

*It is ordered* that the complaints in this proceeding be and they are hereby **DISMISSED**.

Dated January 7, 1913.

**BOARD OF PUBLIC UTILITY COMMISSIONERS,**  
(SEAL) (Signed) **ROBERT WILLIAMS,**  
*President.*

**ATTEST:**

(Signed) **ALFRED N. BARBER,**  
*Secretary.*

*I hereby certify* the foregoing to be a true copy of Order, adopted by the Board of Public Utility Commissioners at a meeting held Tuesday, January 7th, 1913, and recorded in the minutes of said meeting.

**ALFRED N. BARBER,**  
*Secretary.*



THE DELAWARE AND ATLANTIC TELEGRAPH AND TELEPHONE COMPANY.  
 UNDERGROUND CONDUIT PLACED IN ADVANCE OF PAVING IN NEW JERSEY—AUGUST 31, 1906—AUGUST 31, 1911.  
 Page 17, Testimony July 23, 1912.

**TABLE I.**  
**IN ADVANCE OF PAVING.**

LOCATION	Date laid	Laid in Advance of Trench Require- ments (Years)	No. of Manholes Placed	Value of Plant Placed	Sq. Yds. of Paving Saved	Kind of Paving	Cost of Paving per Sq. Yd.	Saving
Princeton Ave., Princeton,	Nov. 1907	1,505	4	\$ 620.	502	Mac.	\$ .50	\$ 251
Princeton Ave., Trenton,	July 1908	2 5,975	19	4,000.	1,660	Bitu.	2.50	4,150
Rosemont, Hoffman, Belmont Circle, Whittier and Highland, Trenton,	Nov. 1909	1 2,665	11	2,000.	740	Asph.	2.25	1,665
Genessee Street, Trenton,	Sept. 1906	1½ 4,225	12	5,000.	1,182	"	2.25	2,660
Jefferson Street, Camden,	Nov. 1907	2 516	3	450.	172	B. B.	.75	129
Haddon Avenue, Camden,	Oct. 1907	2 8,660	30	12,200.	{ 1,450 1,145	Asph. Mac.	2.25 .50	3,263 572
Federal Street, Camden,	May 1909	2 5,580	18	7,300.	{ 1,050 675	B. B. Asph.	.75 2.25	788 1,519
Broadway, Camden,	June 1909	2 2,916	9	4,055.	810	"	2.25	1,823
Broad Street, Woodbury,	May 1908	4 2,300	7	2,400.	640	Bitu.	2.50	1,600
Delaware Street, Woodbury,	July 1907	5 2,900	9	3,000.	800	Bitu.	2.50	2,000
Haddon Avenue, Collingswood,	1909	2 5,060	15	4,000.	1,406	"	2.00	2,812
Atlantic Avenue, Atlantic City,	Nov. 1906	2 18,000	51	30,000.	6,000	"	3.00	18,000
Misc. Streets, Atlantic City,	Apr. 1909	2 5,000	20	3,500.	1,670	"	3.00	5,010
Ventnor Avenue, Atlantic City,	Apr. 1911	3 8,500	23	12,000.	2,765	"	1.70	4,700
Misc. Streets, Atlantic City,	May 1910	2 5,000	15	3,400.	1,670	"	3.00	5,010
Ventnor Avenue, Atlantic City,	May 1911	3 4,200	10	5,500.	1,360	"	1.70	2,312
Misc. Streets, Atlantic City,	May 1911	1 900	3	500.	300	"	1.70	510
New Jersey Avenue, Atlantic City,	July 1911	1 2,193	6	1,762.	731	"	3.00	2,193
Misc. Streets, Atlantic City,	June 1911	1 1,600	5	1,050.	530	"	3.00	1,590
Misc. Streets, Atlantic City,	July 1911	1 2,000	6	1,300.	660	"	3.00	1,980
<b>TOTALS</b>		<b>89,695</b>	<b>276</b>	<b>\$104,037.</b>	<b>27,918</b>			<b>\$64,537</b>

TABLE II.

## CONDUIT BUILT IN ADVANCE OF PAVING

LOCATION	Time in Advance	Cost	Paving Saving	Interest	Net Saving
Princeton	½ year	\$ 620	\$ 251	\$ 18.60	
Trenton	2 "	4,000	4,150	480.00	
"	1 "	2,000	1,665	120.00	
"	1½ "	5,000	2,660	450.00	
Camden	2 "	450	120	54.00	
"	2 "	12,200	3,835	1,464.00	
"	2 "	7,300	2,307	876.00	
"	2 "	4,055	1,823	486.60	
Woodbury	4 "	2,400	1,600	576.00	
"	5 "	3,000	2,000	900.00	
Collingswood	2 "	4,000	2,812	480.00	
Atlantic City	2 "	30,000	18,000	3,600.00	
" "	2 "	3,500	5,010	420.00	
"	2 "	3,400	5,010	408.00	
" "	3 "	12,000	4,700	2,160.00	
" "	3 "	5,500	2,312	990.00	
" "	1 "	500	510	30.00	
" "	1 "	1,762	2,193	105.72	
" "	1 "	1,050	1,590	63.00	
" "	1 "	1,300	1,980	78.00	
		\$104,037	\$64,537	\$13,759.92	\$50,777.08

Through the rates the amount of \$13,759.92 has been charged up as a return due on property not yet used and useful.



## NEW YORK.

### Public Service Commission—Second District.

IN THE MATTER OF THE APPLICATION OF THE HEUVELTON TELEPHONE COMPANY FOR AUTHORITY, PURSUANT TO THE PROVISIONS OF SECTION 101 OF THE PUBLIC SERVICE COMMISSIONS LAW, TO ISSUE ITS STOCK FOR THE ACQUISITION OF THE PROPERTY OF THE TELEPHONE LINES OWNED BY WEBSTER L. WAINWRIGHT.

Case No. 3234.

*Decided December 5, 1912.*

#### Authorization of Stock Issue—Form of Accounts.

Upon application to issue capital stock for the purpose of acquiring telephone property, the Commission, having caused its Division of Telephones and Telegraphs to make an investigation of the original cost value and present depreciated or net structural value of the property in question, granted the application, with the provision that the applicant should open its accounts by making certain specified entries upon its books.\*

#### ORDER.

*Whereas*, the Heuvelton Telephone Company, pursuant to the provisions of section 101 of the Public Service Commissions Law, has applied to this Commission for authority to issue \$14,000 of capital stock with which, or the proceeds thereof, it desires to acquire the property of Webster L. Wainwright; and

*Whereas*, the Commission has caused the Division of Telephones and Telegraphs to make an investigation of the original value and present depreciated or net structural value of the property owned by the said Wainwright, the report†

The original cost values and the depreciated or structural values which I would place on the telephone properties now owned by Webster L. Wainwright are as follows:

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\*Editor's headnote.

†Engineer's Report.

# 100 NEW YORK PUB. SERV. COMMISSION—SECOND DISTRICT.

	Original Value	Structural Value
Central Office Equipment .....	649.00	642.70
Property in Village of Heuvelton...	1,802.34	1,697.09
"    "    Town of Oswegatchie..	3,317.79	2,726.95
"    "    "    Depeyster ...	3,747.65	3,167.83
"    "    "    DeKalb .....	1,169.55	981.81
"    "    "    Lisbon .....	1,986.05	1,664.06
"    "    "    Canton .....	865.52	430.05
<b>Total.....</b>	<b>13,537.90</b>	<b>11,310.49</b>
Right of Way .....	200.00	200.00
Tools, etc. ....	181.55	100.93
Supplies on hand .....	307.96	307.96
<b>Grand Total.....</b>	<b>\$14,227.41</b>	<b>\$11,919.38</b>

## COMMENTS:

Apparently there has been very little right of way bought as the total cost of right of way is \$200.00 for approximately 41 miles of pole line or less than \$5.00 per mile.

November 25, 1912.

Engineer of Division of Telegraphs & Telephones.

of such Division being dated the 25th day of November, 1912, and filed herein; and

*Whereas*, based upon such report there has been prepared a final report of the Division of Capitalization dated December 3rd, 1912;

*Ordered*, (1) That the Heuvelton Telephone Company be and it hereby is authorized, pursuant to the provisions of section 101 of the Public Service Commissions Law, to issue its common capital stock of the total par value of \$14,000.

*Ordered*, (2) That such stock shall not be sold for less than its par value.

*Ordered*, (3) That such stock, or the proceeds thereof, shall be used to acquire all of the property of Webster L. Wainwright described in the petition herein.

*Ordered*, (4) That the company shall for each three months' period ending March 31, June 30, September 30, and December 31, respectively, file not more than fifteen days from the end of such periods a verified report showing—

(a) What, if any, stock has been sold or disposed of during such period in accordance with the authority contained

herein and the date of such sale or disposal;

- (b) To whom such stock was sold;
- (c) What proceeds were realized from such sale;
- (d) Any other terms or conditions of such sale.

Such reports shall continue to be filed until all of the said stock shall have been sold or disposed of in accordance with the authority contained herein.

*Ordered*, (5) That the company shall for each six months' period ending June 30 and December 31, respectively, file not more than thirty days from the end of such periods a verified report showing the amount expended during such periods of the proceeds of the stock herein authorized for each of the purposes specified herein.

*Ordered*, (6) That in the opinion of the Commission the money to be procured by the issue of said stock herein authorized is reasonably required for the purposes specified herein and that such purposes are not in whole or in part reasonably chargeable to Operating Expenses or to Income.

*Ordered*, (7) That such corporation shall open its accounts by placing upon its books the following entry:

Intangible Capital, Dr.....	\$ 2,080.62
Right of Way, Dr.....	200.00
Central Office Equipment, Dr.....	622.70
Subscribers' Station Equipment,	
Dr. ....	2,981.85
Exchange Lines, Dr.....	7,685.94
General Equipment, Dr.....	120.93
Materials & Supplies, Dr.....	307.96
<hr/>	
To .....	\$14,000.00
Capital Stock, Cr.....	\$14,000.00

IN THE MATTER OF ALFRED H. WESTON, COMPLAINANT, vs.  
NEW YORK TELEPHONE COMPANY, RESPONDENT.

Case No. 3192.

*Decided January 9, 1913.*

Installation of Pay Station.

This Complaint asking for an order requiring the New York Telephone

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Company to install a public pay station upon the complainant's premises was dismissed on the ground that there were already several public pay stations in the immediate vicinity and that there was no evidence of any substantial public demand for the installation requested.\*

### ORDER.

In this case complainant asks the Commission to order respondent to install a public pay station upon his premises. A hearing was held December 21st, 1912, and the premises of the complainant and the locality have been personally inspected and reported upon by the Division of Telegraphs and Telephones. The evidence shows that there are already a number of public pay stations in the immediate vicinity of complainant's office building at No. 2950 Fulton Street, Brooklyn, New York City, but the testimony does not indicate any substantial public demand for the installation of an additional public pay station upon complainant's premises. The Commission has examined into the merits of this case with great care and is not satisfied that the desire of the complainant is supported by facts necessary to the exercise of its authority. It is therefore

*Ordered*, That the complaint in this proceeding be and the same is hereby dismissed.

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IN THE MATTER OF THE COMPLAINT OF J. G. WOLF *vs.* NEW YORK TELEPHONE COMPANY.†

Case No. 3370.

*Dated January 20, 1913.*

### Reduction of Toll Rate.

Upon complaint with respect to the toll rate charged subscriber for service between Great Neck and Manhattan, the respondent conceded that the rate should be reduced from 20 cents to 15 cents but contended that it should be allowed sufficient time for inserting a proper statement in the company's directory and for giving definite information to the operating offices.

*Held*: That the rate conceded to be reasonable should be put into effect immediately; that the company's bills to subscribers in Great Neck and

\*Editor's headnote.

†A similar order was issued in the matter of the complaint of the United Holding Company, Bellerose Association, *vs.* New York Telephone Company.—Ed.

Manhattan for toll charges between these points can be rendered upon the reduced rate, and that exchanges can be notified to amend their lists so as to show the 15 cent rate.

*Ordered*, That the toll rate charged subscribers for service between Great Neck and Manhattan shall be 15 cents after February 1st, 1913; that the rates between Great Neck and Manhattan for messages originating at pay stations shall be reduced by not less than 5 cents per message; and that the respondent shall make such changes in its toll rates between Great Neck and parts of the City of New York other than Manhattan as may be necessary to bring said rates into line with those at other stations which also take a 15-cent subscribers' rate to and from Manhattan.\*

### OPINION.

This case was called for hearing in the Metropolitan Building, New York City, on Monday, January 13th, 1913. The complaint relates to the subscribers' toll rate between the Manhattan, New York City, district and Great Neck, which is now 20 cents and it is claimed by complainant that it should not exceed 15 cents. The respondent company after giving extended consideration to this complaint now concedes that the rate in question should be reduced from 20 cents to 15 cents. The time when the reduced rate should be made effective has been suggested as involved in some difficulty, in that there should be sufficient time allowed for proper statement in the company's directory and to arrange for the giving of definite information to its various operating offices through which toll messages from Manhattan may be sent. The Commission is of the opinion that these considerations present no real obstacle to the immediate putting in effect of the rate here conceded to be reasonable. Respondent's bills to subscribers in Great Neck and Manhattan for toll rates between these points can be rendered upon the reduced rate. Exchanges can be notified to amend their lists so as to show the 15 cent rate. The respondent company will be expected to make such further changes in rates between Great Neck and other parts of the city of New York as may be fairly involved in this reduction between Great Neck and Manhattan. It is therefore

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\*Editor's headnote.



*Ordered*, That respondent, New York Telephone Company, be and is hereby directed and required to cease and desist on and after February 1st, 1913, from charging any rate for messages between its Great Neck subscribers' stations and its stations in the Borough of Manhattan in excess of 15 cents per message, and to reduce its message rates between Great Neck and Manhattan which originate at pay stations by not less than 5 cents per message.

*Further ordered*, That respondent, New York Telephone Company, shall at the same time or as soon as may be practicable also make such changes in its toll rates between Great Neck and parts of the city of New York other than Manhattan as may be necessary to bring said rates in line with those at other stations which also take a 15 cent subscriber's rate to and from Manhattan.

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IN THE MATTER OF THE APPLICATION OF J. C. MCKNIGHT *vs.*  
NEW YORK TELEPHONE COMPANY.

*Decided January 22, 1913.*

**Reduction of Toll Rate—New Exchange Area—Directory Listing  
of New Numbers.**

Upon complaint that the toll rate of 10 cents between the Great Neck exchange area and Bayside, a part of the Flushing exchange area, was unreasonable, the respondent conceded that the rate should be 5 cents, but stated that it would be first necessary to establish a Bayside exchange area and provide for listing the new Bayside numbers in its directory. The respondent contended that the reduced rate could not be put into effect before July 1st, 1913, owing to the impossibility of re-arranging its forthcoming directory, effective May 1st, 1913, so as to contain the new Bayside numbers.

*Held*: That the respondent should endeavor to change the directory so as to show Bayside numbers in its issue, effective May 1st, 1913, which goes to press February 8th, 1913, and should hold the printing of such issue a short period if this end can be thus attained. If this cannot be done, the new numbers can be supplied to Bayside subscribers and to Great Neck and Flushing subscribers by a supplement.

*Ordered*, That the respondent establish a Bayside exchange area and that the rate between this area and the Great Neck exchange area shall not exceed 5 cents per call after May 1st, 1913.\*

\*Editor's headnote.

## OPINION.

Complainant alleges that respondent's toll rate between its Great Neck exchange area and the locality known as Bayside is unreasonable. The present rate is 10 cents. Bayside is part of a large designated telephone area known as Flushing. Respondent concedes that said rate should be reduced to 5 cents, but says that to put such rate in effect it must establish a so-called Bayside exchange area, rearrange its subscribers' numbers in Bayside, establish a switchboard system covering Bayside, and make numerous physical changes of its lines, besides providing for such Bayside listing in its directory. The Bayside area proposed is satisfactory to complainant. Respondent contends that the changes above indicated cannot be made and the reduced rate put into effect before July 1, 1913. The principle reason for deferring the change until that time is found in the claim that respondent cannot rearrange its directory so as to contain Bayside listings until some time after February 8th, the date when its directory effective May 1 goes to press, nor within such time thereafter as the directory could safely be withheld from printing. The new numbering of Bayside subscriber stations could be supplied to such subscribers and to Great Neck and Flushing subscribers by a supplement. This would cover the service between Great Neck or Flushing and Bayside. Calls from other districts to Bayside subscribers might be under the present numbering, but the switchboard operators at Flushing would know that such a number was changed to a Bayside number and a special Bayside list would indicate the proper number connection. While this would tend to slow up the service to and from Bayside from such outside districts other than Great Neck and Flushing, it would affect relatively only a small number of calls as compared with the calls from Great Neck and Flushing. We are of the opinion that respondent should endeavor to change the directory so as to show Bayside numbers in its issue which goes to press February 8, if at all practicable, and to hold the printing of such issue a short period of time if that will

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permit the purpose to be attained. If that cannot be done then the method above stated or some other practicable procedure should be adopted in order to provide at the earliest possible date for the taking effect of the reduced rate which it is conceded should be put in force. Accordingly, it is

*Ordered*, That respondent, New York Telephone Company, shall establish a so-called Bayside exchange area as shown upon the map used at the hearing of this case, and that its rates for calls between its Great Neck exchange area and said new Bayside exchange area shall not exceed 5 cents per call on and after May 1, 1913.

## **OHIO.**

### **Public Service Commission.**

**IN THE MATTER OF THE APPLICATION OF THE CONVOY HOME  
TELEPHONE COMPANY, OF CONVOY, OHIO, FOR AUTHORITY  
TO ISSUE AND DISTRIBUTE \$5,000 STOCK DIVIDEND.**

**No. 427.**

*Decided January 3, 1913.*

### **Authorization of Stock Dividend.**

This application for authority to issue a stock dividend of \$5,000 was granted, inasmuch as it appeared that a sum in excess of \$5,000 had been expended from income for the acquisition of property and the extension and improvement of the service and that this sum represented surplus earnings, properly accruing to the stockholders as a return upon their investment, which had been diverted from the proper channel of distribution as dividends, so as to facilitate and expedite the development of the company.\*

## **ORDER.**

The Convoy Home Telephone Company, a corporation organized under the laws of the State of Ohio, with its principal place of business at Convoy, Ohio, having, on the twelfth day of December, 1912, filed its petition for the consent and authority of the Commission to issue, distribute pro rata and deliver to its stockholders, of record January first, 1913, its capital stock in the aggregate par value of Five Thousand Dollars, as fully set out in said petition, and the time for hearing said matter having been fixed for Monday, December thirtieth, 1912, at one-thirty o'clock p. m., and due notice of the time and place of said hearing having been given, and having been heard on said day and the further consideration thereof continued from day to day, the same came on this day for final consideration upon the petition, the evidence and exhibits.

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\*Editor's headnote.

After considering the pleadings, hearing the evidence and examining the exhibits, and being fully advised in the premises, and it appearing that moneys, in the sum of more than Five Thousand Dollars, have, by said company, been expended from its income for the acquisition of property and the extension and improvement of its service, and it appearing further that said moneys represented the surplus earnings from the operations of the company, properly accruing to the holders of its capital stock as a return upon their said investment, which had been diverted from their proper channel of distribution as dividends to facilitate and expedite the development of said company, the Commission is satisfied that the prayer of said petition should be granted. It is therefore

*Ordered*, That said The Convoy Home Telephone Company be, and it hereby is authorized to issue, distribute pro rata and deliver to the holders of its present outstanding capital stock, of record, January first, 1913, additional capital stock of the aggregate par value of Five Thousand Dollars (\$5,000.00), it being the opinion and finding of the Commission that said issue of such capital stock is reasonably required for the proper purposes of said corporation. It is further

*Ordered*, That said capital stock be, by said The Convoy Home Telephone Company, issued, distributed pro rata and delivered to the holders of its present outstanding capital stock in reimbursement for moneys heretofore diverted from their lawful channel of distribution as dividends and used for the acquisition of property and the extension and improvement of the service of said company, and for no other purpose whatsoever. It is further

*Ordered*, That said The Convoy Home Telephone Company make verified report to this Commission of the issue, transfer and delivery of said capital stock, herein authorized to be issued, setting forth the date of issue, name of person to whom issued, amount of stock now held and par value of such capital stock delivered in accordance with the provisions of this order.

Dated at Columbus, Ohio, this third day of January, 1913.

J. S. DEWEY, D. H. HUNT, E. C. PHILLIPS, A. A. CURTIS, I. Q. JORDAN, P. J. CURREN, HOWARD McCUNE AND CLINTON MADDEN, COMPLAINANTS, vs. THE CLINTON TELEPHONE COMPANY, DEFENDANT.

No. 273.

*Decided January 6, 1913.*

**Reduction of Rates—Mileage Zones—Inadequate Service.**

Upon complaint as to the rates and service of The Clinton Telephone Company, the Commission found the rates for ten-party rural lines to be unreasonable and the service, in certain respects, inadequate.

The defendant was ordered, among other things, to substitute for the old schedule of rates for ten-party rural lines, a new schedule which extended the limits of the mileage zones; to be prepared to furnish single line rural service upon application; to install a new switchboard; and to overhaul and repair all lines theretofore maintained by subscribers.\*

**ORDER.**

This matter came on to be heard upon the pleadings, the evidence and the exhibits; and the Commission, being fully advised in the premises, finds that certain of the rates and charges now in effect, and charged, demanded and exacted by said defendant company are unjust and unreasonable and that the service rendered by said defendant company is, in certain respects, inadequate. It is therefore

*Ordered*, That said The Clinton Telephone Company be, and it is hereby notified and required to cease and desist from charging, demanding or exacting the following rates and charges, to wit:

— Residences, in country, on 10-party lines:

Under 4 miles from Exchange, per month.....\$1.00

From 4 to 6 miles from Exchange, per month... 1.25

From 6 to 8 miles from Exchange, per month... 1.50

From 8 to 10 miles from Exchange, per month.. 1.75

From 10 to 12 miles from Exchange, per month.. 2.00

Business Houses, in country, on 10-party lines, 50c. per month more than the above residence rate for the same distance from Exchange,

\*Editor's headnote.

which said rates and charges are now being charged, demanded and exacted by said The Clinton Telephone Company and which said rates and charges the Commission has found to be unjust and unreasonable; and that said The Clinton Telephone Company substitute for the said rates and charges so found by the Commission to be unjust and unreasonable, rates and charges not to exceed the following, to wit:

**Ten-party Line Residence Rates:**

Within four miles of an Exchange, per month	\$1.00
Four to eight miles of an Exchange, per month	1.25
Eight to twelve miles of an Exchange, per month	1.50
More than twelve miles from an Exchange per month	1.75

**Ten-party Line Business Rates:**

Fifty cents per month per telephone more than the above,

which said rates and charges the Commission has found to be just and reasonable. It is further

*Ordered*, That said The Clinton Telephone Company be, and it hereby is notified and required to establish and be prepared to furnish to all persons and patrons applying therefor, individual, or single line rural service at just and reasonable rates. It is further

*Ordered*, That said The Clinton Telephone Company be, and it is hereby notified and required to install a new and adequate switchboard at its exchange in Wilmington, Ohio. It is further

*Ordered*, That said The Clinton Telephone Company be, and it is hereby notified and required, at its own expense, to repair, replace and put in good condition, all lines, and every part thereof, now and heretofore maintained by subscribers to the service of said The Clinton Telephone Company. It is further

*Ordered*, That said The Clinton Telephone Company be, and it is hereby notified and required to properly repair, replace and put in good condition, all its lines, and every part

thereof, radiating from its exchange at Sabina, Ohio. It is further

*Ordered*, That said The Clinton Telephone Company be, and it is hereby notified and required to put into effect, on or before the first day of February, 1913, rates not to exceed the rates herein found to be just and reasonable by the Commission. It is further

*Ordered*, That said The Clinton Telephone Company be, and it is hereby required to publish and file with this Commission, on or before the first day of March, 1913, just and reasonable rates for single line rural service and four-party line rural service. It is further

*Ordered*, That said The Clinton Telephone Company be, and it is hereby notified and required to fully complete all the repairs and replacements and be prepared to render all additional service herein ordered, and to fully comply with all the requirements of this order on or before the first day of March, 1913.

Dated at Columbus, Ohio, this sixth day of January, 1913.



## **OKLAHOMA.**

### **Corporation Commission.**

**IN RE REMAND TO THE OKLAHOMA STATE CORPORATION COMMISSION, CASE No. 1827, ENTITLED: PIONEER TELEPHONE AND TELEGRAPH COMPANY, PLAINTIFF IN ERROR *vs.* STATE OF OKLAHOMA AND BURROWS OIL COMPANY, DEFENDANTS IN ERROR.**

**No. 1696.**

**MOTION ON BEHALF OF THE STATE TO REQUIRE REPORT AND TO MAKE REFUND OF EXCESS CHARGES RECEIVED BY THE PIONEER TELEPHONE AND TELEGRAPH COMPANY FOR TELEPHONE SERVICE IN OKLAHOMA CITY FROM JANUARY 1ST, 1909, TO OCTOBER 22ND, 1912.**

**IN RE APPLICATION OF THE PIONEER TELEPHONE AND TELEGRAPH COMPANY FOR PERMISSION TO RAISE RATES IN THE CITY OF OKLAHOMA CITY, OKLAHOMA.**

**No. 1697.**

**Order No. 663.**

*Dated January 11, 1913.*

**Interpretation of Order No. 101—Collection of Charge in Excess of Legal Rates—Authority of Commission to Require Reports of Excess Collections—Suspension of Order No. 101.**

The Commission's Order No. 101, effective November 13th, 1908,\* provides that no telephone company shall charge a different or greater rate than was in effect on October 12th, 1908, for the same service or similar service, unless authorized by the Commission. Under the terms of its franchise from Oklahoma City, granted prior to the effective date of Order No. 101, the Pioneer Telephone and Telegraph Company was authorized to charge certain rates and to increase its rates with every increase of one thousand subscribers in Oklahoma City. Pursuant to the provisions of the franchise, the company increased its rates after the effective date of Order No. 101.

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\*Printed in Volume II Com. Tel. Cases 729.

Thereupon the company was adjudged in contempt by the Commission and a fine was imposed. The company appealed to the Supreme Court of Oklahoma. While this appeal was pending the increased rates were collected. The court affirmed the judgment of the Corporation Commission and held that the franchise ordinance was void and that Order No. 101 was valid.

Thereupon, the Attorney General filed a motion praying that the Commission order the Pioneer Telephone and Telegraph Company to report the amounts which it had collected from each subscriber in excess of the rates which were in effect upon October 12th, 1908. The Pioneer Company then made application for an increase in rates in Oklahoma City and for the suspension of Order No. 101 in so far as it affected Oklahoma City. These two matters were considered together.

1.

With respect to the Attorney General's motion,

*Held:* That Order No. 101 was intended to fix rates and that telephone companies could not increase these rates except upon application to the Commission.

That an increase in the number of subscribers to an exchange does not make the service a dissimilar one within Order No. 101, for which a different rate may be charged. The order means that the rates of any particular exchange may not be increased except as provided therein.

That, inasmuch as Order No. 101 fixed the legal rates to be charged, no other rates could be lawfully charged as long as that order was in effect and the right of the subscribers to the excess collected had become vested.

That the determination of the amount of the excess collections is only a question of bookkeeping and accounting and that the Commission has authority, in its discretion, under the Constitution, to require reasonable reports; also that the defendant company must pay any obligations of this nature that may be so determined by law.

*Ordered,* That the company shall file a statement showing the amounts collected to date from each of its subscribers in excess of the rates in force on October 12th, 1908.

2.

With respect to the application of the Company for the suspension of Order No. 101 pending the determination of the reasonableness of the rates asked for and the reasonableness of Order No. 101 in so far as it applies to Oklahoma City.

*Held:* That, although it is not the policy of the Commission to relieve anyone from the operation of an order while in contempt, nevertheless, inasmuch as it appears that all parties are merely endeavoring to ascertain what the law really is and in consideration of the annoyance and expense of changing a telephone rate in a city as large as Oklahoma City, compliance with the above order as to making an accounting will be considered a sufficient purging of contempt under the circumstances.

*Ordered,* That Order No. 101 be suspended as to Oklahoma City pending the investigation and that the company give a bond conditioned to refund the excess amounts which it collects, pending the investigation, over and above what is finally determined to be a reasonable rate; also that the rates in

effect shall be the authorized rates in Oklahoma City and shall not be further advanced pending the investigation.\*

The above cases involve the same subject matter and will be considered together.

### STATEMENT.

The Commission promulgated an order,† effective November 13th, 1908, which in substance provided that no company shall charge a greater or different rate for service than was in effect on October 12th, 1908, unless authorized by the Commission upon application of the company or other parties in interest.

On October 12th, 1908, the Pioneer Telephone & Telegraph Company was charging rates in Oklahoma City as follows: Individual business, \$3.75; two party business, \$3.15; individual residence, \$2.00; two party residence, \$1.80; four party semi-selective ringing, \$1.75. By the terms of the franchise which had been granted to the Pioneer Telephone & Telegraph Company prior to October 12, 1908, it was provided that the charge should be from 5,000 to 6,000 telephone individual business, \$4.10; two party business, \$3.45; individual residence, \$2.20; two party selective ringing, \$2.00; four party semi-selective ringing, \$1.70. It also provided that from six to seven thousand business telephones should be charged \$4.50, etc., and from seven to eight thousand business telephones, \$4.95, etc. When the subscribers of the telephone company had reached 5,000, according to the contentions of the telephone company, it advanced its rates to the scale provided in the ordinance, for telephones between five and six thousand above set forth. The Burrows Oil Company filed an information alleging a violation of the Commission's order and the company was cited to appear before the Commission for contempt.

The defendant answered in that case alleging that it relied upon the ordinance of the city of Oklahoma City for its

\*Editor's headnote.

†Printed in Volume II Com. Tel. Cases 729.

authority to advance rates and no evidence was offered or introduced at that time as to the reasonableness of Order No. 101. The defendant was fined in that proceeding \$100.00 from which it appealed to the Supreme Court. The Supreme Court on the 21st day of October, 1912, rendered its decision affirming the judgment of the Corporation Commission and holding that the city ordinance, wherein it attempted to establish a scale of rates for telephone service in Oklahoma City was void and that the order of the Commission was in full force and effect.

At the time the case was appealed to the Supreme Court, the defendant gave a supersedeas bond as to the fine and cost, and offered to file a bond with the Commission and ask for a supersedeas of Order No. 101. The supersedeas was denied by the Commission. The defendant did not ask for a supersedeas in the Supreme Court, but had an understanding with the Commission that no further prosecution for contempt would be entertained for a period of approximately nine months, that the defendant might have an opportunity to have the legal questions involved in the case determined by the Supreme Court.

The case was not reached by the Supreme Court as early as anticipated by the parties, no motion having been made by the defendant to advance the case or to inform the court that there was a rate controversy involved, hence the case took its regular course upon the docket, and not advanced as other rate cases.

During the time this case was in the Supreme Court, the defendant charged the scale of rates substantially as was provided by the ordinance of Oklahoma City.

The Attorney General filed a motion praying that the Commission order the Pioneer Telephone & Telegraph Company to file a detailed and verified statement and report of all moneys received by it from all of its subscribers and users of telephones within the corporate limits of Oklahoma City, from the first day of June, 1909, to the 22nd day of October, 1912, showing the names of such persons and the exact amount received from each in excess of the rates that were

in effect at the time Order No. 101 became effective.

The defendant filed an answer setting forth its reasons for charging an amount in excess of that authorized by Order No. 101, and alleged that Order No. 101 was confiscatory and to be required to operate its plant on the rates charged on October 12th, 1909, would be a confiscation of its property and insisted that the Commission was without authority of law to make an order as prayed for by the Attorney General.

The Attorney General filed a demurrer to the answer of defendant alleging that said answer did not state facts sufficient to constitute a defense.

There is no dispute as to the facts. The entire controversy involves the construction of the law.

### OPINION AND ORDER.

#### *By the Commission:*

Before promulgating Order No. 101, the Commission advertised, as provided by the Constitution, the time and place of the hearing and all telephone companies were given an opportunity to be present and make objections and introduce evidence opposing the order, if so desired. The Pioneer Telephone & Telegraph Company was present and made no objections to the issuance of an order, which would in effect make the rates which that company charged, as well as all other companies, throughout the state, the legal and lawful rates until the schedule was changed by order of the Commission.

It is contended by the Pioneer Telephone Company in this case that Order No. 101 was not intended to be an order fixing rates. We cannot agree with that contention. The Commission promulgated this order conforming to all the requirements of the constitution, and the contention that if all the companies had come forward and opposed the order, it would have taken a great length of time to hear all the testimony is no argument against the object the Commission had in view in promulgating the order, or upon what the order really is.

The Commission realized, when it proposed the order, that but few, if any companies in the state would say the rates they were then charging were unreasonably low. Should the rates at any time become too low for any reason, the telephone companies could apply to the Commission and set forth such reasons and the rates could be raised. The Commission has adopted this plan and has permitted telephone companies to raise their rates in two instances.

It is also contended by the defendant that Order No. 101 does not apply to Oklahoma City because the exchange in that city does not come under the clause in the order "shall not charge a greater or different rate for the service or similar service in effect on October 12th, 1908." It insists that if the telephone exchange increases the number of its telephones one or more that this makes dissimilar service. To give the order that construction, it would be no order at all inasmuch as all telephone exchanges have a different number of stations almost daily. The order means that the rates of a particular telephone exchange could not be raised except as provided therein. This order has been so construed by the Commission and understood by all telephone companies. Such was the understanding at the time the order was promulgated.

The defendant in the contempt proceedings heretofore mentioned did not contend that the order, if it were not for the ordinance, would not be effective as to Oklahoma City. If Order No. 101 fixed the legal rate to be charged, no other rate could be lawfully charged as long as that order was in full force and effect. The telephone company now takes what it claims to be an equitable position, asking that the order be suspended and that it now be permitted to show that the old rates were not remunerative, and that as the result of such hearing it would refund any excess which it has collected over and above what is found to be a reasonable rate, which it should have charged during this time.

If the telephone company has charged a greater rate than a lawful rate, the Commission has no authority at this time to relieve the company of its obligations to refund to the

subscribers the excess amount so collected. The Commission cannot make a retroactive order. The right of the subscribers to the excess collected has become vested and there is no authority known to us that can divest them of that right. A court by injunction cannot do so. The legislature cannot do so; neither can the Commission. Should a court grant an injunction, it could only run from the date the injunction was granted, and could not change the legal status or the vested rights of the parties which had accrued under the legal and lawful rate in existence at the time the overcharge was made.

We now come to the next questions which are the most difficult for the Commission to determine: First, the accounting; second, requiring the telephone company to pay to the Commission the overcharges that the same may by the Commission be distributed to whom they are due. We will first consider that part of the Attorney General's motion asking for an accounting.

Section 9, Article IX of the Constitution in part reads as follows:

"The Commission shall also have the right at all times to inspect the books and papers of all transportation and transmission companies doing business in this state and to require from such companies, from time to time, special reports and statements, under oath, concerning their business."

Under the above clause the Commission has authority to require any report, either general or special, that may assist it in the performance of its duties to the public, and the Commission alone is the judge in the first instance of the character of these reports. Its power, however, to exact special reports is not without limit and all orders of the Commission should be reasonable.

The act of the legislature, 1907-08, providing penalty for contempt and for "procedure for the Commission," Section 1239, Snyder's Compiled Laws, 1909, provide for two classes of bonds, which may be given in appeals to the Supreme Court from an order adjudging a defendant guilty of contempt.

One is a bond to appeal from the fine and cost and the other, if the order violated was one prescribing rates, it may also file bond to supersede the order. Instead of the bond to supersede the order being filed in this case, an arrangement was entered into between the Commission and the telephone company whereby the order would not be enforced for a reasonable time pending the appeal in the Supreme Court, and, as a matter of fact, no further prosecutions were entertained by the Commission until the Supreme Court had passed upon the legal phase of the controversy.

Speaking of the second bond, Section 1239 further provides:

“Such bond shall be conditioned to require such corporation, person, or firm to keep such accounts and to make to the Commission, from time to time, such report verified by oath as may in the judgment of the Commission suffice to show the amount being charged or received by the company pending the appeal in excess of the charge prescribed by the Commission in the order violated, together with the names and addresses of persons to whom such overcharges will be refunded in case the charges by the company pending the appeal be not sustained on the final judgment, and the Commission may at any time require such corporation, person, or firm to give additional security, or to increase the suspending bond when the same may appeal to the Commission to be necessary to insure the *prompt refunding of the overcharges* aforesaid. Upon the final judgment, if the order violated is sustained in the Supreme Court, the Commission shall distribute such overcharges to the person to whom the same are due.”

There could be no contention, under the provisions last above quoted, but if there had been a bond given, the Commission could have made an order or made it a part of the bond that an accounting should be made to the Commission substantially as prayed for in the Attorney General's application herein. And, further, upon final judgment, the Com-



mission could have rendered judgment as provided in Section 1242 against the sureties on the appeal or suspending bond. The fact that the Commission realized this was an important legal controversy, and the defendant should have an opportunity to have the same decided by the Supreme Court without any unreasonable harass or expense of litigation, does in no way relieve the defendant from its duties as contemplated in Section 1239 above quoted. The Commission undoubtedly has the same jurisdiction and authority to make an order against the defendant who is primarily liable without bond as though the bond had been given.

Under Section 1242, the Commission is authorized to render judgment against the securities on the suspending bond for the amount of overcharges which had been reported to the Commission and sworn to as correct by the defendant. This law contemplates that when the amount of overcharges is submitted, and sworn to by the defendant, it is a sufficient evidence as to the amount due in so far as the defendant is concerned, hence judgment is authorized without further evidence after the time prescribed in the section shall have elapsed.

Section 19, Article IX of the Constitution, in part. provides:

"In all matters pertaining to the public visitation, regulation or control of corporations and within the jurisdiction of the Commission, it shall have the powers and authority of a court of record, to administer oaths, to compel the attendance of witnesses, and the production of papers, to punish for contempt any person guilty of disrespectful or disorderly conduct in the presence of the Commission while in session, and to enforce compliance with any of its lawful orders or requirements by adjudging and enforcing its own appropriate process against the delinquent or offending party or company after it shall have been first duly cited, proceeded against under due process of law before the Commission sitting as a court."

It is insisted by the Attorney General that the above clause of the Constitution vests the Commission with the authority to make any reasonable order necessary to require compliance with its order, while the Constitution says, "the Commission shall have the powers and authority of a court of record, to administer oaths, to compel the attendance of witnesses," etc., and this language is used in the disjunctive form, that is, a comma follows the word "record," also "oaths." However, this certainly only means that the Commission has the authority of a court of record and to impose appropriate penalties, the maximum amount of which is prescribed in the Constitution, and how and in what manner these penalties may be imposed has since been defined by statute above referred to. The Commission would certainly have no authority to administer oaths other than in connection with its duties under the Constitution. That is, it is not authorized to administer oaths to members of the State senate or other officials upon taking office.

It is insisted by the Attorney General under this section of the Constitution, that the Commission has authority to order an accounting, and the excess paid to the Commission to be delivered to the overcharged subscriber. Just what powers the Commission has under the above provision of the Constitution is not clear. It is evident that the paramount object to be attained by the framers of the Constitution was the prompt and strict compliance with all reasonable orders of the Commission without any unnecessary delay, and it was intended to give the Commission all appropriate authority to enforce that order without unduly invading the province of the courts.

If we are correct in our first premises there could be no serious controversy over how this money should be refunded. If the rates charged on October 12th, 1908, by the defendant were the legal rates up to the time of filing the application herein, and the subscribers have a vested right in all charges collected in excess of that amount, since that date, it is only a question of bookkeeping and accounting to determine the remainder of the controversy. It is immaterial, in so

far as the Pioneer Telephone Company is concerned, whether it had a million dollars' bond or no bond at all, it will pay any obligations in this behalf that may be so determined by law.

The Commission at this time will only order an accounting inasmuch as we deem it will be unnecessary to make further order, after the first contention shall have been finally settled, and if it should become necessary to make an order of what disposition will be made of the overcharges found to be due, the Commission will act at that time.

*It is hereby ordered,* That the Pioneer Telephone & Telegraph Company shall make and file with the Commission a verified statement showing the names of its subscribers in Oklahoma City, and the amount it has collected for telephone station rentals in excess of the rates that were in force on the 12th day of October, 1908, up to and including the present time. The names and addresses shall be shown as they appear upon the books of the telephone company. That these statements shall be made substantially as they were made by the telephone company in the Enid case. This order may be modified at any time to meet the particular local condition found to exist upon application of the Pioneer Telephone & Telegraph Company.

The second application in this case is that of the Pioneer Telephone Company, asking that Order No. 101 be suspended pending a hearing to determine whether or not said order has, since its promulgation as to Oklahoma City, become unreasonable.

It is alleged by the defendant in said application that it entered into a contract with Oklahoma City that it be permitted to charge certain rates and the same should be advanced with every additional 1,000 subscribers, and that it now has more than 7,000 subscribers and the rate it now charges is lower than what it could charge by the terms of the alleged ordinance or contract. The ordinance was held invalid by the Supreme Court and the same has no force and effect. The defendant prays that the Commission set aside, repeal, or annul Order No. 101 in so far as it applies

to Oklahoma City and hold that said order is unreasonable, unconstitutional, and confiscatory. And further prays that a full and complete investigation of the reasonableness of the charges therein prayed for and of the unreasonableness of the rates fixed by said Order No. 101 be made, so that the Commission may pass upon and grant the relief prayed for, and that pending such investigation upon the giving of a good and sufficient bond, conditioned that all amounts collected in excess of rates which may be lawfully fixed by the Commission upon the final hearing under this petition shall be refunded to those entitled thereto.

The Attorney General insists that the defendant is entitled to no relief until it purges itself of contempt in not complying with the Commission's order. This contention is certainly true as an equitable proposition and it has been the policy of the Commission to relieve no one from the operations of an order while in contempt; however, in this case it has appeared that all were honestly trying to ascertain what the law really is and it has not been free from doubt which contentions were correct, and it could not be known to any degree of certainty until the Supreme Court has spoken.

It is no little trouble, annoyance and expense to change a telephone rate in a city as large as Oklahoma City. The compliance with the order in this case to promptly make the accounting hereinbefore ordered will be considered by the Commission a sufficient purging of contempt under all the circumstances in this case. Without a prompt compliance by the telephone company to make such accounting and to comply with any further lawful order of the Commission in reference thereto shall be considered by the Commission as an expression of the telephone company of its wilful intention to disregard Order No. 101 and the expressed good intentions of the defendant will be greatly impaired, and the Commission will feel under no further equitable obligations to not enforce Order No. 101 and all other orders growing out of this controversy by appropriate fines and penalties.

The Commission will, therefore, suspend Order No. 101

pending the investigation prayed for upon conditions set forth in the following order:

*It is therefore ordered*, That Order No. 101 is hereby suspended as to the exchange at Oklahoma City, pending a hearing as to what are reasonable rates in Oklahoma City. That during the suspension of said order and pending the hearing and until final judgment is rendered as to what are reasonable rates in Oklahoma City, the defendant shall give bond in the sum of \$15,000, conditioned to pay over to the Commission the excess amount which it collects pending the hearing over and above what is finally determined to be a reasonable rate by the Commission or by the Supreme Court of Oklahoma, and shall report to the Commission the names of its subscribers and the excess amount collected. That pending the suspension of Order No. 101, the rates now in force in Oklahoma City shall not be further advanced; that rates not in excess of the rates now being collected shall be the authorized rates in Oklahoma City until the controversy is settled. That this order shall take effect for the month of January, 1913, rentals upon the Pioneer Telephone & Telegraph Company filing a written statement with the Commission that the accounting ordered herein shall immediately proceed and that it will employ all the help that is necessary to complete the accounting at an early date. It is not intended by this to preclude the Pioneer Telephone & Telegraph Company from testing the legal point, that is, whether or not the charge collected is in excess of the rates authorized by Order No. 101 became a vested right in the subscriber, or otherwise stated, whether any court or legislative body or agent has the authority to relieve the Pioneer Telephone Company from complying with an order of the Commission as long as the same remained the law of this State.

Oklahoma City, January 11th, 1913.

## INTERSTATE COMMERCE COMMISSION.

IN THE MATTER OF TELEPHONE CONNECTION BETWEEN LINES  
OF THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY  
AND THE TELEPHONE SYSTEM OF THE WAR DEPARTMENT  
OF THE UNITED STATES GOVERNMENT AT FORT MEYER,  
VIRGINIA.

Docket No. 5412.

*Dated January 6, 1913.*

### Physical Connection with Government Lines.

Order Upon the Commission's own motion, for an inquiry into the refusal of The Chesapeake and Potomac Telephone Company to establish physical connection of its lines with the telephone system of the War Department at Fort Meyer, Virginia.\*

It appearing that the respondent herein has refused to make telephone connection between its lines and system and the lines and system installed by the War Department of the United States Government at Fort Meyer, Va., as more fully appears by complaint of the War Department hereto attached,

*It is ordered,* That an inquiry be, and the same is, hereby instituted by the Commission, on its own motion, into the practices, rules and regulations of the respondent herein governing the connection of the wires of the respondent with those of the War Department of the United States Government at Fort Meyer, Va., and the interchange of messages between the telephone system of the respondent and of the War Department at Fort Meyer, Va., with a view to ascertaining whether the practices, rules and regulations of respondent with respect to the connection and interchange of messages are just and reasonable, or are discriminatory, or otherwise unlawful, and that this proceeding of inquiry be conducted for the purpose of the issuance of such order or orders as may be found necessary in the premises.

*It is further ordered,* That the respondent herein file, on or before the 1st day of February, 1913, such statement or statements of its position with respect of the inquiry herein instituted as to it may seem proper.

*And it is further ordered,* That The Chesapeake & Potomac Telephone Company be, and it is hereby, made respondent to this proceeding.

\*Editor's headnote.

## PRIVATE WIRE CONTRACTS.

Docket No. 5421.

*Dated January 6, 1913.*

Upon complaint that under the terms of private wire contracts of the Western Union Telegraph Company use is made of its public wires at less than the published tariff rates and that persons other than the parties to the contracts frequently use the private wires of lessees for the transmission of private messages free of charge, in violation of the act to regulate commerce as amended;

*It is ordered,* That a proceeding of inquiry and investigation be, and it is hereby, instituted by the Commission on its own motion into and concerning contracts for private telegraph and telephone wires, and the rates, rules and regulations therefor and the practices thereunder, with a view to the issuance of such order or orders as may be necessary in the premises.

*It is further ordered,* That the American Telephone & Telegraph Company, Western Union Telegraph Company and Postal Telegraph Cable Company be, and they are hereby, made respondents herein, and that this proceeding be set for hearing at such times and places as the Commission hereafter may direct.

## TELEPHONE AND TELEGRAPH INVESTIGATION.

Docket No. 5462.

*Dated January 13, 1913.*

Information having been lodged with this Commission to the effect that the American Telephone & Telegraph Company, by the operations of itself and allied companies, is attempting to monopolize the telephone and telegraph business of the United States and is fast driving out of existence independent competitors; and further, that this company and other telephone and telegraph companies are guilty of unlawful discriminations and are imposing unreasonable rates, rules, regulations and practices in the conduct of their business:

*It is ordered,* That a proceeding of inquiry and investigation be, and it is hereby, instituted into and concerning the

history, the financial operations, the rates, rules, regulations and practices of telephone and telegraph companies subject to the Act to Regulate Commerce, with a view to the making of a comprehensive report and to the issuance of such order, or orders, as may be necessary to correct such discriminations and make applicable reasonable rates and practices.

*It is further ordered*, That this proceeding be set for hearing at such times and places, and that such persons be required to appear and testify, to afford such information, and to produce such books, documents and papers as the Commission may hereafter direct, and that investigation be carried on in the meantime by such means and methods as may be deemed necessary and proper.

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LOCAL COMMERCIAL TELEPHONE SERVICE IN  
PITTSBURG, PA.

Docket No. 5463.

*Dated January 14, 1913*

Upon complaint that under the terms of certain unexpired contracts the American Telephone & Telegraph Company is granting certain persons in the City of Pittsburg, Pa., unlimited local commercial service at a flat rate of \$125 per year while at the same time exacting from other patrons a higher rate for a similar service.

*It is ordered*, That a proceeding of inquiry and investigation be, and it is hereby, instituted by the Commission on its own motion to determine whether the matter and things complained of are subject to the jurisdiction of this Commission and constitute an unjust discrimination in violation of the Act to Regulate Commerce as amended.

*It is further ordered*, That the American Telephone & Telegraph Company be, and it is hereby, made a respondent herein, and that this proceeding be set down for hearing at such time and place as the Commission may hereafter direct.

*And it is further ordered*, That a copy of this order be forthwith served upon each of the parties to said proceeding.



## NOVA SCOTIA.

### Board of Commissioners of Public Utilities.

IN THE MATTER OF THE APPLICATION OF THE MARITIME TELEGRAPH AND TELEPHONE COMPANY, LTD., FOR THE APPROVAL OF A SPECIAL RATE KNOWN AS THE PONY FARMERS' LINE TELEPHONE RATE.

*Dated December 26, 1912.*

#### Approval of Rate for Limited Period.

Upon application for approval of a special rate known as the Pony Farmers' Line rate:

*Held:* That, in view of the large number of subscribers under the Pony Farmers' Line rate as compared with the number of subscribers previously obtained under the existing rate, the balance of convenience would seem to be in favor of allowing the applicant to put the rates into effect until April 1, 1913. With a view to learning how these rates would work out in practice, it was ordered that the applicant furnish certain information with respect to the results of the operation of Pony Farmers' Lines.\*

#### RULING.

Present:

*Mr. John U. Ross, Chairman, Parker R. Colpitt, and R. T. MacIlreith, K. C.*

At the hearing of this application on the 10th day of December, 1912, Mr. McLellan, K. C., appearing on behalf of persons opposed to the approval of the rate, asked that the application be adjourned until March next for the purpose of obtaining further information, and that the old rate remain in force in the meantime. Counsel on behalf of the Company asked that the Pony Farmers' Line rate be approved for the following eighteen places, in the first named twelve of which it is in force at the present time, viz:

Debert, Belmont, Alma, Hopewell, Maccan, Spryfield, Beach Meadows, Eastern Passage, St. Margaret's Bay,

\*Editor's headnote.

Clarkesville, Tracadie, Heatherton, Doddridge, Harbour Au Bouchie, Big Bras D'Or, Alder Point, East Bay and Jacksonville.

After carefully weighing the evidence and in view of the large number of subscribers under the Pony Farmers' Line rate as compared with the number of subscribers previously obtained under the existing rate, the balance of convenience would seem to be in favor of allowing the applicant to put the following rates in effect until April 1st, 1913, viz: a monthly rate of \$1.00 for house and \$1.25 for business, with a toll rate of five to fifteen cents depending on distance where the subscriber desires to speak off the line to which his telephone box is connected.

With a view to learning how these rates will work out in practice, the applicant will be required to file with the Secretary of the Board a statement on or before the tenth day of the months of February, March and April, 1913, respectively, providing in detail the following information for each of the above named places where Pony Farmers' lines are operated for the preceding month:

Place, name of subscriber, house or business telephone, distance from exchange, toll rate, number of toll calls, receipts toll calls.

An order may issue accordingly.

Dated at Halifax, N. S., December 26th, A. D. 1912.

## ONTARIO.

### Railway and Municipal Board.

IN THE MATTER OF THE APPLICATION OF THE NORFOLK COUNTY  
TELEPHONE COMPANY, LTD., FOR AN ORDER FOR LEAVE TO  
INCREASE ITS TARIFF CHARGES FOR TELEPHONE SERVICE.

*Decided September 6, 1912.*

#### **Increase in Rates—Inadequate Service—Inefficient Management.**

This application to increase rates was dismissed as a result of the report of the Board's expert who found:

That much dissatisfaction with the applicant's service existed and that the increase in revenue to be expected from the proposed rates might be wiped out by the withdrawal of dissatisfied subscribers. Moreover, there was danger of competition resulting. In view of the local feeling, it would be a most inopportune time for the Company to attempt to force increased charges upon its subscribers.

That a contract with the Bell Telephone Company for switching service and the resulting increases in the cost of operation and in the charges to rural subscribers were largely responsible for the organized opposition to the application.

That, while the local exchange plants were up to standard, the rural lines were in need of a systematic overhauling. If the application had been confined to the local exchanges there would have been no serious objection to it, but the charges for rural service should not be increased until the rural lines are put in condition for efficient service.

That the most important need of the applicant was a practical telephone manager, with ability to handle men and to manage the system. This would be more economical in the end although such a man would cost more than the present manager.

That opportunity should be afforded the applicant to renew the application at a later date for the purpose of showing that it is furnishing efficient service and that its revenue is not adequate to pay a reasonable dividend upon its paid-up stock, after setting aside a sufficient amount for depreciation, which should be made compulsory.\*

#### **ORDER.**

Upon the application of the above named Company for an order for leave to increase its tariff charges for telephone service, upon hearing Counsel for the Applicants and several

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\*Editor's headnote.

parties opposing the application and the evidence adduced on behalf of all parties, upon reading the petitions filed in opposition to the application and the report of the Board's expert, the Company's profit and loss account, the statement of assets and liabilities, the account of their receipts and disbursements and the other papers and documents filed,

*The Board orders* that the application of the above named Applicants for leave to increase its tariff charges for telephone service be, and the same is hereby dismissed

*And the Board orders* the above named Applicants to pay the sum of \$95.00, being the fee and disbursements of Francis Dagger, Esq., the Board's expert and \$10.00 for a stamp on this Order. The Board makes no further order as to costs.

#### REPORT OF EXPERT.

Toronto, Sept. 3rd, 1912.

JAMES LEITCH, Esq., K. C., *Chairman*,  
Ontario Railway and Municipal Board,  
Toronto.

Dear Sir:

Re Application of the Norfolk County Telephone Co., Ltd., for an Order approving an increase in its Tariff of Charges (P. F. 1214).

I beg to inform you that in accordance with your instructions, I have made an investigation in the above matter and submit herewith my report, as follows:

#### *Meetings of Subscribers.*

On July 5th and 15th, I attended meetings at Simcoe and Delhi, respectively, which were called at the instance of subscribers and stockholders of the Company who are opposing the granting of the Order applied for. A list of those present at these meetings, together with a synopsis of the proceedings at Delhi, is attached hereto. A full report of

the proceedings at Simcoe has already been submitted and placed on file.

It will be seen from the reports of these meetings that much dissatisfaction exists on the part of the subscribers in regard to the service furnished by the Company, and while, at Simcoe, some of this dissatisfaction may be due to the inefficient attention of the operators at the Bell Telephone Company's exchange, it is apparent from the statements of the various speakers that the Norfolk County Company's lines are not maintained as effectively as they should be.

The opposition of the Norfolk County subscribers, whose lines terminate at Simcoe, is intensified because of the fact that since the Norfolk County Company sold out its local exchange in that town to the Bell Company, they have been charged \$15 a year for rural service, whereas the rural subscribers in other parts of the Norfolk County Company's territory are only paying \$12 per annum.

As the reports of these meetings can be referred to, it is unnecessary for me to comment further upon them.

#### *Petitions and Letters from Subscribers.*

While at Simcoe a number of petitions and letters protesting against the granting of the Company's application were handed to me by Mr. S. L. King, who represented the subscribers in the Township of Woodhouse at the Board's session on June 10th last, and these have since been supplemented by additional ones received by mail.

These petitions and letters have been placed on file, and an analysis of them is as follows:

Letters stating that subscribers will discontinue service if charges are increased—6.

Letters protesting against increased charges—8.

Petitions stating that service will be discontinued if charges are increased:

From Simcoe .....	9	signatures
Simcoe .....	7	"
Marburg .....	9	"
Lynnville .....	11	"
Vanessa .....	32	"
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Total .....	68	"

**Petitions protesting against increased charges:**

From Port Dover .....	15	signatures
Charlottetown ...	10	"
Woodhouse .....	20	"
Bloomsburg .....	10	"
Lynnville .....	11	"
Vanessa .....	18	"
" .....	21	" (Stockholders)
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Total .....	105	

*Probable Effect of Increased Charges.*

If the Company's application were granted, I compute that net increase of revenue would be:

Simcoe—\$1 per subscriber on 294 telephones...	\$294.00
Waterford, Port Dover, Delhi and Scotland—\$1	
per subscriber on 100 telephones.....	100.00
Waterford—\$3 per subscriber on 305 telephones..	915.00
Teeterville—\$2 per subscriber on 110 telephones.	220.00
Delhi—\$2 per subscriber on 103 telephones....	206.00
Scotland—\$2 per subscriber on 75 telephones..*	152.00
Otterville—\$3 per subscriber on 20 telephones..	60.00
<hr/>	
	\$1,553.00

*Gain to Company.*

394 telephones at \$1.....	\$394.00
289 telephones at \$2.....	578.00
325 telephones at \$3.....	975.00
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	\$1,947.00

\*So appears in original.

In order to enjoy the full benefit of this gain the Company would have to maintain its list of subscribers as it exists at this date, which, in view of the protests made, it is very doubtful if this would be possible. At Simcoe, for instance, 42 subscribers have signified their intention of relinquishing the service if the charges are increased. This would mean a loss of \$630.00 revenue against an increase of \$294.00.

The withdrawal of 155 subscribers would wipe out the total estimated increased revenue which would result from the granting of the Company's application.

In view of the temper and dissatisfaction which exists at this time among a large number of subscribers and stockholders, in the event of the rates being increased, there would, in my opinion, be a danger of competition resulting. This would be a serious matter for the Company and would have the opposite effect to that which is the purpose of this application.

I am compelled to direct your attention to these facts because in view of the local feeling which has developed since this application was made, I am convinced that the present would be a most inopportune time for the Company to attempt to force increased charges upon its subscribers.

#### *Analysis of Company's Reports.*

The Secretary of the Company has furnished me with copies of its Reports for the past three years, which have been filed and show the following:

YEAR ENDING JAN. 31ST, 1910.

Revenue from rentals, tolls, etc. . . . \$9,665.85

Balance from previous year . . . . . 1,289.83

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\$10,955.68

Operating expenses including up-

keep .....	\$4,909.54
Interest .....	297.02

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5,206.56

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Net revenue .....\$5,749.12

or 13.6% on the paid-up stock on Jan. 31st, 1910.

YEAR ENDING JAN. 31ST, 1911.

Revenue from rental, tolls, etc.....	\$13,631.95
Operating expenses, including interest on bonds, etc. ....	8,159.36

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Net revenue .....\$5,472.59

or 12.8% on the paid-up stock on Jan. 31st, 1911.

YEAR ENDING JAN. 31ST, 1912.

Revenue from rental, tolls, etc.....	\$15,993.68
Operating expenses, including interest on bonds, etc. ....	13,843.58

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Net revenue .....\$2,150.10

or 5% on the paid-up stock on Jan. 31st, 1912.

The Balance sheet for this year shows that the assets exceed the liabilities by \$10,186.75.

The reduction in the amount of Net Revenue for the year ending Jan. 31st, 1912, is partly due to the fact that the Company in that year replaced its open wire construction in Waterford and Delhi with lead covered cable and made other improvements in its plant at these points, a large portion of the cost of which was properly charged to revenue. An examination of the reports for 1910-11 and 1911-12 shows that the cost of repairs and maintenance for 1911-12 exceeded that of the previous year by \$2,630.91. I am informed that one-third the cost of the cable and all the labor in connection with this reconstruction was charged to rev-



enue, which would account for the unusual expenditure for maintenance in 1911-12. This unusual expenditure at these points will, however, not have to be incurred again for many years, and moreover, the substitution of cable in place of open wires will reduce the normal cost of repairs.

Another reason for the reduction in the amount of net revenue referred to, is the increased cost of operating at Simcoe, due to the arrangement made with the Bell Telephone Company, whereby the Norfolk County Company withdrew its exchange from that town, and now pays the former company for switching the Norfolk County rural subscribers at the rate of \$5.00 per telephone. The Reports for 1910-11 and 1911-12 show the following:

1911-12	Operating Salaries:.....	\$2,612.69
	Bell Telephone Co. Rentals .....	1,640.36    \$4,253.05
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1910-11	Operators and Manager.....	2,744.22
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	Increased cost of operating 1911-12.....	\$1,475.83

To this difference must also be added the cost of operating the Norfolk County Company's Simcoe Exchange in 1910-11 which was not incurred in the following years. The effect of this arrangement with the Bell Company has been to increase the rates of the rural subscribers in the vicinity of Simcoe from \$12 to \$15 a year, and to saddle the Norfolk County Company with an increased operating expense of two-fifths of \$1,640.36, or \$656.14, which has to be met out of the rentals from subscribers at other points, who receive no benefit from the Simcoe arrangement.

In view of the fact that the Norfolk County Company is paying the Bell Telephone Company \$5.00 per telephone at Simcoe, for the same service which is furnished by the Bell Telephone Co. at Brampton, to the Township of Chinguacousy for \$2.00 per telephone, it is obvious that the Norfolk County Company made an improvident bargain. This bargain and the resultant increase in the rural telephone charges at

Simcoe is largely, if not altogether responsible for the organized opposition to the Company's application.

*Condition of Plant.*

LOCAL EXCHANGES.

From an examination of the Company's plant so far as time would permit, I am of opinion that the local exchange plants at Waterford and Delhi are in every way up to the standard for towns of their size. These plants have practically been reconstructed, and similar work is being proceeded with at Port Dover. In fact, had the Company's application been limited to the local subscribers at these points, on account of the expenditure on this reconstruction, there would have been no serious objection to the granting of the application. The additional revenue from the increased charges asked for at these points would, however, scarcely reach \$100.00 a year.

RURAL LINES.

In regard to the rural lines, I am of opinion that in order to give a satisfactory service, these need to be systematically overhauled, and put in a state of thorough repair. Until this has been done, I do not think it will be possible to satisfy the subscribers up to the point where they will submit to an increase of charges, without the most strenuous opposition, if not the establishment of a competitive system. For this reason I would suggest that the Board defer taking any action in the matter of increasing the charges for rural service until the Company is able to satisfy the Board that its lines are all in an efficient state of repair, and that the causes for the many complaints placed on file with the Board have been removed.

*Future Management.*

I am further of opinion that the most important need of the Company is a practical telephone man, with ability to

handle men, to manage the system. While such a man would cost more than the present manager, I am satisfied he would be more economical in the end. If the statements of some of the subscribers and stockholders are to be relied upon, the present outside staff are not earning 50% of their wages. Serious complaints are made about these men loafing and drinking when they should be at work. These conditions are largely due to the fact that the men, especially the foreman, know that there is no official in authority over them, with sufficient knowledge of the work to check them up and properly discipline them. So long as these conditions exist it will be impossible for the Company to operate its plant efficiently and economically.

*Conclusion.*

In conclusion I wish to say that the Officers and Directors of the Company have accorded to me every assistance in my investigation, and have evinced every desire to facilitate the work of the Board. I believe that this investigation has brought to light conditions which the Directors had no knowledge of. I am further satisfied that the Executive of the Company is perfectly sincere in its desire to improve the service up to a standard which will satisfy the demands of its subscribers and the public, and they have already expressed the intention of carrying out that desire.

I would therefore recommend, in the event of the Board deciding to dismiss the Company's application at this time, that an opportunity be afforded to renew the application at a later date, and if it can then be shown to the satisfaction of the Board that the Company is furnishing an efficient service, and that its revenue is not adequate to pay a reasonable dividend upon its paid-up stock, after setting aside a sufficient amount for depreciation (which should be made compulsory) the question of a revision of its charges should be favorably considered.

I am, Dear Sir,

Your obedient servant,

(Sgd.) F. DAGGER.

## PART II.

### COMMISSION ORDERS, RULINGS AND DECISIONS OF INTEREST TO TELEPHONE AND TELE- GRAPH COMPANIES.

#### CALIFORNIA.

##### Railroad Commission.

**E. F. JORDAN vs. OCEAN SHORE RAILROAD COMPANY.**

**Case No. 330. Decision No. 353.**

*Decided December 3, 1912.*

#### **Cost of Additional Service—Financial Condition of Company.**

Complaint asking for an order directing the defendant to continue in service two morning trains, one of which the defendant proposed to discontinue during the winter season in accordance with the practice of previous years.

The precise question involved was whether the defendant could justly be required to expend \$1,200 per month in order to receive \$100 in revenue. It appeared that because of the various suits pending against the company by former bondholders it was impossible to borrow money to make the much needed improvements and to meet current obligations.

*Held:* That, if the road were in sound financial condition, the Commission would not be inclined to permit the train to be discontinued; but that until the law suits are disposed of, it is of the utmost importance, not only to the owners, but to all who patronize the road, that no obstacle be placed in the way of keeping the road open for at least some kind of service. This is an inopportune time to burden the road with the additional expense incident to the operation of both trains.

The complaint was dismissed accordingly.\*

**H. H. McClosky and F. V. Meyers, for Complainant.**

**Page, McCutchen, Knight & Olney, and A. C. Greene, for Defendant.**

#### REPORT.

**LOVELAND, GORDON and EDGERTON, Commissioners:**

In this action the complainant prays for an order of the

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\*Editor's headnote.

Commission directing the defendant to continue in service two morning trains arriving in San Francisco at about the hours of 7:30 a. m. and 8:40 a. m. The complaint is the result of an announcement on the part of the defendant that it proposes during the winter months to discontinue the train arriving at 8:40 a. m., it being the practice of the defendant to take off one train during the winter season. The complainant alleges that if this train is withdrawn from service, it will be impossible for a large number of people to live at their present homes along the line of the defendant and do business in the city and county of San Francisco, and further, that no good reason exists for such train not being operated by the defendant carrier.

The defendant, in its answer, denies that the withdrawal of the train arriving in San Francisco at present at 8:40 a. m. would work any great hardship on the people now living along its line and that the train now arriving at 7:30 a. m., which it is proposed to continue in service, is ample to reasonably accommodate all persons desiring to travel during the winter months. The defendant sets up in its answer the fact that during the period from November 6th, 1911, to April 20th, 1912, but one passenger train was run each morning from Half Moon Bay to San Francisco and that the average number of passengers who traveled on this train on each week day was 39.87 and that of this number 15.42 were so-called commuters.

We will not at this time discuss the defendant's answer with reference to the earning capacity of its early morning passenger trains. At the hearing, the complainant introduced evidence to prove that the withdrawal of the train arriving at 8:40 a. m. would cause great inconvenience to the traveling public, particularly, the commuters whose business in San Francisco was such that made it very convenient to use this train. Testimony was given to the effect, that the territory tributary to the line of the Ocean Shore Railroad was being retarded in development because of the inadequate train service, and that the withdrawal of this train would result in compelling the few people now re-

siding along the line to abandon their homes. Testimony offered by the defendant was not controverted and was to the effect that during the month of October, 1911, during which period two morning trains were operated, a total of 1686 passengers were carried, or an average per day of 54.4. During the month of October, 1912, the same trains carried 1681 passengers, or an average of 54.2 passengers per day. These figures indicate to the Commission that the business of the two years is on an equal footing.

From the evidence introduced by the defendant, it appears that the total earnings from passengers carried on the two morning trains during the month of October, 1911, amounted to \$637.69, or an average of \$20.56 per day. During the month of October, 1912, the same trains earned \$544.56, or an average of \$17.55 per day. During the period November 1st, 1911, to April 30th, 1912, during which time but one train was operated, the passenger receipts amounted to \$2,629.22, or an average of \$14.45 per day. This would indicate that during the winter months when but one train was operated the passenger receipts average \$3.10 per day less than the receipts of the two trains for the balance of the year.

In other words, the operation of these two trains during the period—April 30th to November 1st—resulted in an increase in revenue to the railroad of \$3.10 per day over what was received from the operation of one train during the winter months.

During the period—November 6th, 1911, to April 20th, 1912—the average number of passengers carried on the one train which was operated at this time was 39.87. An investigation of the records of the Ocean Shore Railroad indicates that from November 1st to November 26th, 1912, inclusive, Train No. 2 averaged 17.3 passengers per day and Train No. 4 averaged 30.6 passengers per day. This indicates that approximately 48 passengers per day patronized the two morning trains during the best part of November of this year, and in comparison with the travel from November 6th, 1911, to April 20th, 1912, during which time

the average travel was 39.87 passengers per day on one train, it would appear that in the month of November of this year, the average travel on two trains was approximately eight passengers more than patronized one train during the winter months of 1911-12.

From the testimony it appears that the average number of commuters carried on the two trains during the month of October, 1911, amounted to 24.2 per day, and that during November, 1912, the average number of commuters carried on both trains on week days amounted to 24.3 per day. During the period—November, 1911, to April, 1912—the average number of commuters carried was 15.42 per day on the one train operated.

From these figures it would seem that during the winter months, 1911-12, when one train was operated, the defendant carried approximately nine less commuters per day than it did on two trains during the month of October, 1911. From the record of travel on these two trains, it would appear that if the Ocean Shore Railroad is permitted to discontinue the operation of one train, it will carry approximately nine less commuters per day, provided, of course, the history of the year before is repeated and the same decrease in commutation travel occurs this year as last. The question, then, to consider is whether the defendant should be required to run an extra train primarily to carry nine passengers riding on commutation tickets, the maximum receipts from the sale of which tickets will not exceed sixty (\$60) dollars per month.

We believe the records clearly show that the Ocean Shore Railroad, except during the summer months when excursions are run, operates its passenger service at a loss. And we believe that until this road is put in shape and operates in a manner which will attract homeseekers that it will continue to operate its passenger trains, except during the summer months, at a decided loss.

Considerable time was taken up at the hearing examining witnesses with reference to the cost per day of operating the train which the complainant desires should be kept

in service. Witness for the defendant testified that it would cost approximately \$84 per day, and included in this cost is a proportion of overhead and maintenance expense. It was admitted, however, that no additional overhead expense or maintenance of track, roadway and such like items would be incurred by the running of this particular train and for the purposes of this case, we will assume that the actual cost of running this train will be \$40 per day, or approximately \$1,200 per month, which figure is arrived at after a very careful investigation. From the record of travel during the time two trains were operated in 1911 as against one during the winter months of 1911-12, and also considering the travel of this date, we are of the opinion that at best the increased revenue which the Ocean Shore Railroad will derive from the operation of two trains during the winter months will amount to \$100 per month. We then come to the question of whether or not, in justice to the defendant, we must ask it to expend \$1,200 in order to receive \$100 in revenue.

Railroads under normal conditions never handle, nor do they expect to handle, as many passengers during the winter months as during the summer season, and as a rule, the winter service is more restricted than that of summer. It has not, however, been the practice of well established railroads to restrict their winter commutation service except in cases where such commutation trains run between summer resorts and large cities, which summer resorts are closed during the winter period.

From our investigation, it appears that in the years 1909, 1910 and 1911, the Ocean Shore Railroad was invariably operated at a heavy loss during the winter months. This deficit during the winter months of these years runs from \$7,000 to \$16,000 per month. In fact, the road appears to have been operated at a loss in all but three months of 1909; two months of 1910; four months of 1911. In the year 1912, however, the road appears to have been more fortunate than in previous years and has paid something over operating expenses in all but three months to date.



It is a matter well known to the Commission that the Ocean Shore Railroad has been seriously handicapped by reason of its inability to raise money to make many needed improvements to its line. Its service has been frequently interrupted during the winter period for many days at a time due to slides at points where the line skirts the bluffs above the ocean. The condition of the motive power and rolling stock is far from the best which accounts for the heavy maintenance of equipment expense. The conditions surrounding the maintenance of this property are very different from those of large lines. The expense of operating an additional train 60 miles a day by a large line would be of very little consequence.

In disposing of this controversy, we must, therefore, consider all of the conditions under which the defendant's line is operated, including the necessity for raising money to put the road in safe condition to operate and to provide additional equipment.

The complainant urges that the road is in a good, healthy financial condition. In this, we cannot agree. The road has little or no working capital and under conditions which ordinarily prevail during the rainy season, heavy expenditures will be required to keep the road open at all.

In order to ascertain the facts concerning the financial condition of the road and the obligations which would have to be met during the next few months, the Commission made some investigations and finds that there is approximately \$22,000 cash on hand from the operation of the road. There is approximately \$56,000 in the hands of various parties, namely the former receiver of the road and the Mercantile Trust Company. This money, however, is not available at the present time and a considerable length of time may elapse before it is. In the mean time, in order to keep the road running so that there may be no delay in operating trains from the terminus at Twelfth and Mission streets, San Francisco to Tunitas Glen, we find the following sums of money must be obtained for the several purposes below mentioned:

Steam shovel .....	\$ 7,100 00
Paving streets ordered by the San Francisco Supervisors..	12,000 00
Two steel bridges to replace wooden bridges in San Francisco ordered by the Supervisors of San Francisco..	18,000 00
Taxes—Second Installment .....	5,400 00
Purchase of five pieces of right of way in San Francisco..	60,620 00
Working capital to pay operating expenses during the winter months which months have always shown a deficit	30,000 00
Total .....	<u>\$133,120 00</u>

To meet these expenditures the defendant has on hand \$22,000 with the possibility of securing \$56,000 additional. It is absolutely necessary, in order that this property may be operated continuously that a steam shovel be provided to take care of slides, if any occur, during the winter months. Street paving is now being done and must be paid for. The rights of way to be acquired cover land over which the railroad is now operating without any title, or right, and unless purchased, the defendant is in a position where the owner of the property could remove rails from his property, thereby preventing any through service whatever.

From the records of previous years it is apparent to us that \$30,000 working capital is hardly sufficient to carry the road through an ordinary winter.

Because of the various suits now pending against the present company by former bondholders, it is impossible at this time to borrow money to make much-needed improvements and meet current obligations and until these suits are disposed of, it is of the utmost importance, not only to the owners of the property, but to all who patronize the road, either by traveling or shipping freight, that no obstacles be placed in the way of the management for keeping the road open for at least some kind of service.

We state frankly that we believe if the Ocean Shore Railroad were in a financial condition to stand the drain, it would be good business to keep the two trains in operation during the winter months. Because, in our opinion, it would have a tendency to establish confidence in the project, and with this confidence would come a healthy gain in population along the line. We believe, however, that this is an

inopportune time for complainant to insist on this road's maintaining a two-train service at an expense of \$1,200 per month, which will not, in our opinion, increase the revenue of the road over \$100 per month. If the road at this time were not beset with law suits and had ample equipment in good repair and were not facing large expenditures to purchase rights of way which are already mortgaged, in other words, if this road were in a sound financial condition, we would not be inclined to permit this train to be taken off. Under all the circumstances in the case, which have received our most careful consideration, we are of the opinion that it would be unreasonable at this time to require the defendant to continue two passenger trains in service and we will, accordingly, permit the withdrawal of one morning passenger train from service after December 15th, 1912.

The Commission will expect the two-train service to be resumed March 15th, 1913, unless conditions make it practically impossible to do so. We desire at this time to notify the Ocean Shore Railroad that the Commission expects it to improve its roadbed and provide proper equipment before November, 1913.

There is no question in our minds but that a modern service will prove of great benefit to the Ocean Shore Railroad. There are many very attractive places on this line for suburban homes and resorts and the owners of the railroad should find some way of removing the obstacles which prevent the raising of capital to provide the much-needed improvements. In this way only can the owners of the road fulfill their obligations to the public to provide modern and safe service.

Thousands of people have purchased property along this line with the intention of building homes. Real estate operators were promised an elaborate electric service by the original promoters of the road and the original promoters of the line themselves sold a very large amount of property to homeseekers on such promise.

Material for construction and operation of an electric

railway, including cars and power house equipment, was ordered and structural steel for the building having been received, was advertised extensively as a means of inducing innocent persons to purchase property along the line, notwithstanding the affairs of the road were in a critical condition at the time.

It may be true that the present owners of the road did not make the promises to persons purchasing the property, nevertheless, many of the present holders of securities held bonds or stock in the original company and must have been aware of the representations made to investors to induce them to purchase property.

The Commission proposes to use all the power it possesses to see that the territory served by the Ocean Shore Railroad is provided with adequate transportation facilities and that thousands of property owners who want to become patrons of the line are not denied the privilege.

While we are permitting one morning train to be withdrawn for the reason that our investigation develops the fact that the road can ill afford at this time to stand any financial loss whatever, we most strongly urge that the parties interested in the ownership of the line get together on some common ground, and provide the means for rehabilitating the property in order that the road may be brought up to its maximum earning capacity and the public furnished the service to which it is entitled.

Since this case was submitted, the Commission has been in receipt of protests signed by several hundred citizens residing along the line of the Ocean Shore Railroad and these protests have received our earnest consideration. In permitting this train to be withdrawn, we have considered the case from every possible angle and believe that, in view of the financial condition of the property, harassed as it is by law suits among the contending factions claiming an interest in the ownership of the road, that the best interests of the public lie in keeping the road in operation for the present with at least some kind of service. Rather than burden the road at this time with the additional expense

incident to the operation of two trains, we feel that the public interests require that every precaution be taken to keep the road open during the winter.

It must be borne in mind, particularly by applicant and by those who have supported the application by petition, that their request is not for a continuation of such service as has been given in the past, but rather for an additional service over the winter schedules, which have been in effect since the operation of the road began.

We recommend that the complaint be dismissed and submit the following form of order :

### ORDER.

A complaint having been filed in the above entitled case and a hearing having been duly held therein and good reasons appearing therefor as set forth in the foregoing opinion,

*It is hereby ordered*, That the complaint be, and the same is hereby dismissed without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission.

Dated at San Francisco, California, this 3rd day of December, 1912.

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IN THE MATTER OF THE APPLICATION OF THE HAWTHORNE  
ELECTRIC AND WATER COMPANY FOR THE ESTABLISHING  
OF RATES.

Application No. 5.      Decision No. 356.

*Decided December 6, 1912.*

**Basis of Rates—Flat and Meter Rates—Installation of Meters—  
Cost of Meters and Services—Rates of Other Like Utilities.**

In its application for an order fixing water rates, the applicant admitted that rates which would yield a reasonable return upon what it claimed to be its investment in the water plant, would be prohibitive, because of the fact that the number of consumers was small as compared with the capacity of the plant to furnish water.

*Held:* That, if the rates were to be fixed as asked by the applicant, it might easily be that the consumption of water would be so largely reduced as to result in a serious loss of revenue.

That, with respect to flat rates and meter rates, the flat rate resulted in discrimination, because the careful consumer had no advantage over the user who wilfully or carelessly wasted water. Furthermore, the flat rate offered no opportunity to distribute the burden of cost upon a fair basis of quantity.

That meters are properly a part of the plant and there is no more reason for compelling the consumer to pay the purchase price and the cost of installing a meter than there is to force him to purchase a pump or any other part of the plant. For the same reason the company should make all service connections at its own cost. Meters should be installed as rapidly as possible.

That the fixing of a uniform rate for all the utilities in a class might work gross injustice because of greatly varying conditions as between the operations of one company and another.

A schedule of flat and meter rates somewhat higher than the rates charged by other companies in the county was established.\*

*Frank J. Thomas*, for applicant.

*Chas. M. Ackerman*, for consumers.

## REPORT.

This is an application by the Hawthorne Electric and Water Company for an order fixing rates to be charged by applicant for the sale and delivery of water.

Applicant was incorporated in July, 1909, and theretofore the water producing and delivering plant was operated by the same people who later incorporated this company.

These same people also organized the Hawthorne Improvement Company which was a land company and other corporations for the purpose of manufacturing, etc. Apparently the promoters' primary consideration was the sale of land, and in order to promote this, water was produced and delivered upon the land. As an evidence of this, attention is called to the fact that for the first three years, from 1907, water was furnished from this plant free to all consumers.

In 1910, a flat rate of \$1.00 was established and this rate prevailed to January, 1912. Under this rate the consumer

\*Editor's headnote.

was allowed to use an unrestricted amount of water and no attempt was made during this period to cut down or regulate the amount of water used. In January, 1912, a portion of the services were metered and a quantity charge made under the rates now in existence.

Much testimony and other evidence was introduced at the hearing to establish the physical value of this property and the applicant, through its engineer, set out at length its theory of the basis on which a value should be placed on its pumped water. Applicant pumps all of its water from wells sunk in land which it owns and the market value of which land, determined by comparing it with surrounding lands, is included in the plant value, and it is in addition to this that applicant demands that a value be included, based upon its pumped water.

Applicants confess in their application that to fix rates which would return a reasonable amount on what they claim to be their investment in this water plant, would result in a prohibitive rate such as the present consumer could not afford to pay because of the fact that the consumers are small in number compared to the ability of the plant to furnish water. Here, then, we have what in effect amounts to a statement by applicant that some other basis must be used in fixing rates than a reasonable percentage on physical values, unless the applicant has in mind the rule that when a plant is constructed of a magnitude greater than the needs of its consumers require, such consumers should not be called upon to provide a revenue through rates on such excessive construction.

We do not believe it necessary in determining this matter to go extensively into the question of physical values presented by the applicant which are by admission greater than the patrons of this system can be required to yield a return upon. In fact, were we to fix rates as asked by applicant, there is grave question whether anything like the present quantity of water would be consumed, and it might easily be that the consumption of water would be so largely reduced as to result in a serious loss of revenue to applicant.

Experience has shown that where there is any necessity of conserving water, the flat rate, by which in return for a fixed sum per month, the water consumer is allowed to use any amount of water he sees fit, results not only in a waste of water but in discrimination, because notwithstanding however careful and considerate the prudent consumer may be in the use of water, he has no advantage over the user who wilfully or carelessly wastes it. Furthermore, the flat rate offers no opportunity to distribute the burden of cost upon a fair basis of quantity of service furnished the consumer, because within the limit of the flat rate the smallest consumer pays as much as the largest. This principle must not be carried to the extent of preventing the establishment of a fair minimum charge, for this latter is based on the necessity of compelling each consumer to bear some part of the burden of furnishing the utility. Hence we wish to encourage the use of meters, or the measured service, in the more arid section of the State, and while it might not be practicable in this case to order applicant to at once install meters on all of its service, we believe that this should be done as rapidly as possible, and furthermore, until this is done, any flat rate should be on such a basis as to insure that the wasteful user will pay a reasonable proportion of the cost of the service furnished him. A comparatively heavy charge for an unlimited supply of water will not injure the careful small user, as he can resort to the meter rate. Furthermore, we believe that the water company should install meters at its own cost, as meters are properly a part of the plant and there is no more reason for compelling a consumer to pay the purchase price and the cost of installing a meter than there is to force him to purchase a pump or an engine or any other part of the plant. For the same reasons we believe that the water company should make all service connections at its own cost.

It may appear that the rates fixed in the following order are somewhat higher than the rates charged by other companies in the county of Los Angeles, but it should be remembered that the fixing of a uniform rate for all utilities



in each class might work gross injustice because of greatly varying conditions as between the operations of one company and another. In this case we are not considering the conditions of other water companies but are passing only on those of the company before us.

Having given careful consideration to all of the factors presented as aiding to a conclusion of what just and proper rates should be, we find that the rates set out in the following order are just and reasonable rates.

### ORDER.

Hawthorne Electric and Water Company having filed with this Commission an application to establish rates for water furnished its customers and consumers, and said application having been set for hearing and notice of said hearing having been published by direction of this Commission, and a public hearing having been held on said application in the City of Los Angeles, County of Los Angeles, and being fully informed in the premises,

*It is hereby found as a fact,* That the following rates are reasonable to be charged by said Hawthorne Electric and Water Company for water delivered to its consumers, and the said rates are hereby established to become effective on the 1st day of January, 1913:

*Meter rates:*

- Minimum charge, \$1.25 per month for 750 cubic feet or less.
- Next 750 cubic feet, 12½ cents per month. Per 100 cubic feet.
- Over 1,500 cubic feet, per month. Per 100 cubic feet.
- Flat rate, \$1.50 per month.

It is further ordered that meters be placed at the request of the consumer or at the option of the company, and that such meters and their placement be at the expense of the company, all service connections to be made at the expense of the company.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this sixth day of December, 1912.

## MARYLAND.

### Public Service Commission.

IN THE MATTER OF THE APPLICATION OF THE BALTIMORE AND OHIO RAILROAD COMPANY IN PENNSYLVANIA FOR AUTHORITY TO EXECUTE A MORTGAGE COVERING TWO AND ONE-HALF MILES OF ITS RAILROAD IN THE STATE OF MARYLAND, WHICH MORTGAGE IS FOR THE PURPOSE OF SECURING CERTAIN BONDS TO BE ISSUED BY SAID COMPANY FOR THE PURPOSE OF REFUNDING OUTSTANDING OBLIGATIONS OF ITS CONSTITUENT COMPANIES.

Case No. 511—Order No. 1004.

*Decided December 20, 1912.*

### Authorization of Bond Issue.

This application by "The Baltimore and Ohio Railroad Company in Pennsylvania," for authority to issue bonds to the amount of \$40,000,000, in so far as such issue might affect that part of its road (two and one-half miles in length) which is situated in Maryland, was granted and the applicant was authorized to issue the bonds to The Baltimore and Ohio Railroad Company as substituted security for bonds of the constituent companies of "The Baltimore and Ohio Railroad Company in Pennsylvania" pledged under a mortgage of The Baltimore and Ohio Railroad Company.\*

### ORDER.

*Whereas*, "The Baltimore and Ohio Railroad Company in Pennsylvania," a corporation existing under the laws of the State of Pennsylvania, and under Chapter 88 of the Acts of 1853 of the General Assembly of Maryland, operates part of its road, to wit, about 2½ miles in the State of Maryland, has applied to this Commission for authority to issue \$40,000,000 of 50-year bonds so far as such issue may affect that part of said road situate in the State of Maryland, the purpose for which said bonds are to be issued being the retirement of a like amount of outstanding bonds issued by the constituent companies of "The Baltimore and Ohio Railroad Company in Pennsylvania"; and

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\*Editor's headnote.

*Whereas*, This Commission, after due hearing, is of the opinion that the use of the capital to be secured by the issue of said bonds is reasonably required for said purpose of said corporation, to wit, the refunding of its obligations;

It is, therefore, this 20th day of December, 1912, by the Public Service Commission of Maryland,

*Ordered*, 1. That the issue by "The Baltimore and Ohio Railroad Company in Pennsylvania," of its fifty-year bonds in the amount of forty millions of dollars (\$40,000,000) for the purposes above set forth, be and the same is hereby authorized and approved.

2. That, inasmuch as the bonds of said constituent companies are now pledged under the Prior Lien Mortgage and First Mortgage of The Baltimore and Ohio Railroad Company as part of the security for the Prior Lien Mortgage and First Mortgage bonds of that Company, the said "The Baltimore and Ohio Railroad Company in Pennsylvania" is hereby authorized to issue said bonds to the said The Baltimore and Ohio Railroad Company as substituted security under said Prior Lien Mortgage and First Mortgage, as in said application set forth.

3. That when said bonds shall have been issued in pursuance of authority hereby given, the said "The Baltimore and Ohio Railroad Company in Pennsylvania" shall make report of the fact, duly verified by affidavit, to this Commission.

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IN THE MATTER OF THE COMPLAINT OF DAVID BACHRACH AND  
OTHERS *vs.* CONSOLIDATED GAS, ELECTRIC LIGHT AND  
POWER COMPANY OF BALTIMORE.

JAMES H. PRESTON, MAYOR OF THE CITY OF BALTIMORE, *vs.*  
CONSOLIDATED GAS, ELECTRIC LIGHT AND POWER COM-  
PANY OF BALTIMORE.

JAMES H. PRESTON, MAYOR OF THE CITY OF BALTIMORE, *vs.*  
CONSOLIDATED GAS, ELECTRIC LIGHT AND POWER COM-  
PANY OF BALTIMORE.

Cases Nos. 175, 176, 177.

*Decided January 13, 1913.*

Petitions asking for a reduction in the maximum rates charged for electricity and gas by the Consolidated Gas, Electric Light and Power Company of Baltimore.

**General Principles.**

Efficient service and reasonable rates are to a considerable extent interdependent. Attention must be given to the conditions under which capital may be procured. The affairs of the corporation must also be kept constantly upon a reliable basis, which will insure the service that the community requires at reasonable rates. The effort in regulation is to correct, as far as possible, the errors of the past and still leave the company in a position to meet its obligations under conditions which will be just and fair to it and to its customers.

**Capitalization—Overissue of Securities—Early Losses—Effects  
of Competition.**

In a case where it is evident that good business judgment and care in construction have been exercised and that securities have been issued for actual value only, some intangible values can be allowed without exciting criticism. Such a condition, however, does not prevail in the affairs of the respondent. Upon the assumption, which is very liberal to the Company, that the securities outstanding before the consolidations represented the cost of the properties, there has been, in connection with the adjustments involved in the various consolidations, an increase of \$9,850,638 which does not represent actual investment in any form. \$9,672,000 of this amount consists of bonds.

It was urged by the Company that early losses were proper items for capitalization, especially where the losses had been caused by competition which the public not only permitted but encouraged.

In the absence of proof as to the causes of the former competition, it is unfair to charge the public of that day with the whole responsibility for competition and to place all of the resulting burden upon the shoulders of the public to-day. Moreover, the possibility of competition was one of the risks which capitalists of those days knew they must face. If this were a case in which the losses were known to be such only as resulted from the indisposition of a community to change from old to new methods, some means of recoupment, either by conservative capitalization or by an allowance in rates which would by degrees pay the passed dividends, might be permitted.

**Cost of Reproduction—Expert Appraisals—Property not used—Overhead  
Allowance—Depreciation—Easements in Public Highways.**

If estimates of the cost of reproduction new are to be a feature of investigations made by regulating bodies, those bodies must, in order to accomplish satisfactory results, establish some sort of standard along the

lines of rules for uniform accounting, as guides in making such estimates. Appraisals of this kind are of comparatively recent origin and have been, to some extent at least, the outgrowth of public regulation, and practically nothing has been done to establish a method or plan upon which they shall be made. Conclusions based upon the findings of contending expert appraisers alone would be little better than a guess at the true value of the property.

An appraisal of the property as of June 30, 1911, at \$27,485,102, upon the theory of reconstruction new, was submitted by the Company and formed the basis of the Commission's estimate of value as of June 30, 1912, \$26,417,414, which included the additions for the year 1911-1912 and \$5,000,000 for the value of easements, which were not included in the Company's appraisal.

In considering the items of the valuation, the Commission included land structures not used, for the reason that to some extent these were used for storage purposes, while other portions were rented out and produced a revenue. The Commission included an allowance for preliminary organization, but held that, since the valuation was made as for an entirely new plant, it must be assumed that a new company would undertake the work, and the cost of consolidating the gas and electric divisions was not, therefore, entitled to consideration, since two companies would scarcely be formed for the mere purpose of consolidation. The Commission made an allowance for general contractors' profits, but none for sub-contractors' profits.

With respect to depreciation the Commission stated that there was no doubt that the property was well maintained and thoroughly efficient, which indicated that the actual depreciation was not as great as that shown by the life tables, which were largely made up of averages. The Commission held that the easements owned by the Company in the streets of Baltimore, which were assessed for taxation at \$5,000,000, were real property and were properly included in the assets of the Company as property upon which it was entitled to earn a return.

### Protection of Bonds.

Section 30 of the Public Service Commission Law of Maryland provides that:

"Every such valuation shall be so made and ascertained by the Commission that as far as possible it shall not disturb the value of bonds of any of said corporations issued prior to this Act."

This provision means that "as far as possible" the value of the bonds as property shall not be disturbed. The proviso is contained in the section of the law which provides for valuation alone, and could, therefore, have had no direct relation to either the rate of return or the rates for service. In the absence of a wide discrepancy between the ascertained value of the property and the par value of the bonds issued against it, indicating either a greatly depreciated condition or unconscionable financial operations, the bonds should be protected. The practical question is, can we assume the

par value of the bonds (\$29,358,000) to be the value of the property and establish a rate of return which will provide for the legitimate needs of the Company and, at the same time, be reasonable to the public?

#### Rate of Return—Interest on Bonds—Dividends.

The rate of return should be based primarily upon the actual investment, and should bear some relation to the rate of interest allowed by law. In the case of public service corporations, whose revenues are subject to fluctuations, some latitude must be allowed so that the deficits of one year may be made good from the larger profits of another year. The legislative standard of 6% with some margin for uncertainties furnishes a rule which, in a general way, should be controlling.

The law of the state has legalized the bonds of the company issued prior to the Act, at least to the point of providing for the payment of interest thereon. The bonds issued since the consolidation, including those authorized by the Commission, represent actual expenditures for extensions and improvements, and the return allowed should protect them. This can be done without imposing rates which are oppressive or unreasonable and which will compare most favorably with rates in the leading cities of the country.

The first step in determining rates for service is to ascertain the obligations which the company must meet in order to carry on its business and perform its duty to the public. The necessary operating expenses, fixed charges, depreciation reserve and allowance for contingencies amount to \$5,554,276. The allowance for fixed charges, depreciation and contingencies is equivalent to 8 7/10% of the allowed value of the property, including easements, and to 7 9/10% of the par value of the outstanding bonds. The balance of \$537,601, obtained by close figuring on expenses, which will remain after deducting the above amount from the estimated revenue to be derived from the rates fixed, is about 3/4 of the amount required to pay dividends on both kinds of stock, and if only a dividend upon the preferred stock is paid from this balance, the remainder would not be too large a sum to carry to surplus.

Rates of 80 cents net per 1,000 cubic feet for gas and 8½ cents primary rate per K.W.H. for electricity come nearer than any other to meeting the conditions which a proper regard for the service, the public and the company demand.\*

#### OPINION.

LAIRD, *Chairman*:

The petitions in these cases have a common object, namely, a reduction in the rates for electricity and gas charged by the Consolidated Gas, Electric Light and Power Company of Baltimore. It appears that the maximum rates only are attacked, the prayer in the first case being that the Commission

\*Editor's headnote.

may investigate the charges made by the Company and reduce the price of electricity to small consumers; and the petitions of the city, after alleging that the prices now being charged for gas and electricity are "excessive, unfair and unreasonable, and are disproportionate to the proper cost of manufacturing and delivering gas and electricity," asks the Commission to fix by order reasonable maximum prices to be charged hereafter by the Company for gas and electricity in the City of Baltimore.

In compliance with Section 6 of the Public Service Commission Law, as amended by chapter 563 of the Acts of 1912, the Assistant General Counsel, Mr. Albert C. Ritchie, was assigned to represent the Complainants in the investigation, and the Company was represented by Messrs. Vernon Cook and Calvin W. Chestnut, of the firm of Gans and Haman. The case was tried with very great ability and resourcefulness, and the exhaustive briefs filed by the respective counsel have been of much assistance to the Commission. The public hearings consumed forty-four days, and three days were given to the argument. The stenographic notes cover 4,819 pages of testimony, and 40 exhibits were filed by the Complainants and 89 by the Company.

The nature of the case necessitated a searching inquiry into the affairs of the Company. It was found at the outset that the Company had been engaged, through the well-known firm of Ford, Bacon & Davis, of New York, in making an inventory and appraisal of its property. A copy of this appraisal was filed with the Commission October 19th, 1911, and at once placed in the hands of the Engineering Department of the Commission for review. Some delay was occasioned by changes in the personnel of the Commission and the prolonged illness of one of its members, and it was not until some time in April, 1912, after Mr. Ritchie had been assigned to the case, that the more active features of the investigation were begun. At that time Professor Bemis was called into consultation and he and the Chief Engineer of the Commission were of the opinion that the inventory made by Ford, Bacon & Davis was as complete as it could be made, that

the prices were in the main fair, and that overhead charges, contractors' profits, incidentals and kindred items could be revised and adjusted upon the base figures of the Ford, Bacon & Davis appraisal. In view of the length and minuteness of the investigation, we feel that nothing has been lost by proceeding in this manner.

The Commission appreciates the grave responsibility of having to decide a case of such great importance as this one, affecting as it does the interests of those who have invested large sums of money in the enterprise and of the residents of a populous and enterprising city whose domestic comfort and business prosperity are in no small degree dependent upon the efficiency of the defendant corporation, its ability to meet the demands upon it to-day and in the future, and the prices which it is permitted to charge for its products.

It seems proper at the outset to state some general principles which should be kept steadily in mind in determining cases of this kind.

Section 31½ of the Public Service Commission Law provides that every gas corporation and every electrical corporation shall furnish and provide such service, instrumentalities and facilities as shall be reasonably safe and adequate and in all respects just and reasonable, and that all charges made by such corporations for gas, electricity or any service rendered, shall be just and reasonable and not more than allowed by law or by order of the Commission.

It would seem to follow from this language that efficient service and reasonable rates are to a considerable extent interdependent. It is to be understood, we take it, that in imposing upon corporations the duty of furnishing safe and adequate service and to provide the instrumentalities and facilities necessary to furnish such service, the General Assembly intended, at the same time, to permit the corporation to earn sufficient money at least to provide the service exacted by law, and to pay operating expenses and a fair return upon its actual investment in property used for the public service. Nor could the Legislature have been blind to

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the fact that extensions of the plant and further investments of capital would be required from time to time to meet demands for service which it would be the duty of the corporation to gratify, and which it would be within the power and duty of the Public Service Commission to order. These considerations involve, necessarily, within proper limits, some attention to the conditions under which capital may be procured and the affairs of the corporations kept constantly upon a reliable basis which will insure all of the service that the community requires at reasonable rates. This does not mean that excessive capital at the outset of an enterprise can be justified or approved, nor that capital unduly accumulated during the vicissitudes of business and resulting from bad management or other causes over which the public had no control, is necessarily entitled to recognition in establishing rates. But it cannot be overlooked that whatever is done in the present case is for the future and that the effort is to correct, as far as possible, the errors of the past and still leave the Company in a position to meet its obligations under conditions which will be just and fair to it and its customers.

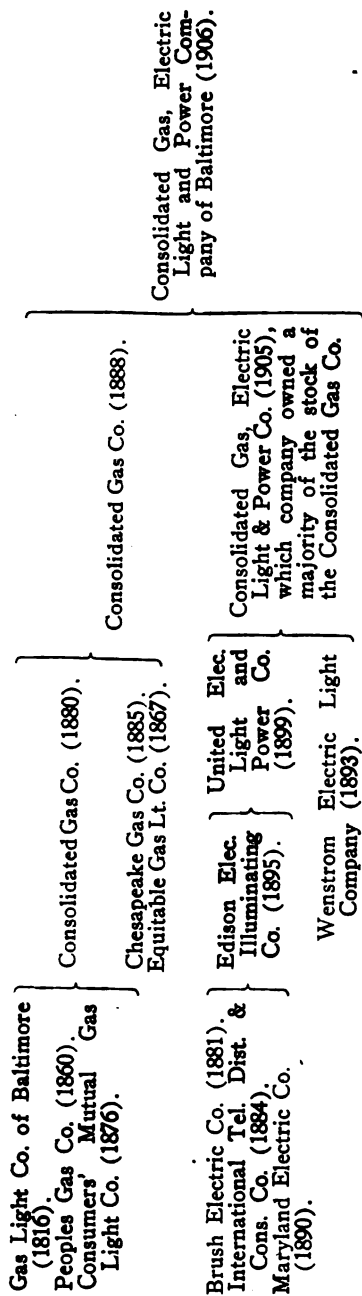
On behalf of the Complainants it is contended that the capital of the Consolidated Gas, Electric Light and Power Company is greatly inflated; that a considerable part of it is not entitled to any return; that the Company, inasmuch as it is getting a return upon inflated capital, is, therefore, earning too much money, and that a fair rate of return upon the fair value of its property does not justify the present charges for service and they should be reduced.

These contentions of the Complainants are strenuously combated by the Company, and we are confronted with the necessity of determining, according to our best judgment, the rates for gas and electricity in the City of Baltimore which will be just and reasonable to the public and the Company.

#### CAPITALIZATION.

Tables No. 1 and No. 2 taken from the brief of Complainants' Counsel, show succinctly the corporate history of the Company, and its outstanding obligations as of June 30th, 1911, and June 30th, 1912.

TABLE No. 1.  
CONSOLIDATED GAS, ELECTRIC LIGHT AND POWER COMPANY.  
CORPORATE HISTORY.



NOTE.—The present Consolidated Gas, Electric Light and Power Company of Baltimore controls, as of June 30, 1911, the following subsidiary Companies:

1. Northern Electric Company, through stock ownership (1899).
2. Baltimore Company (a real estate holding company), through stock ownership (1905).
3. Roland Park Electric and Water Company, through stock ownership and lease. Also bonds guaranteed (1908).
4. Baltimore Electric Company, through stock ownership (by owning the stock of the Maryland Securities Company, which in turn, owns the common stock of the Baltimore Electric Company), and lease. Also, bonds and preferred stock guaranteed (1908).
5. Mt. Washington Electric Light and Power Company, through stock ownership (1903), and lease (1912).
6. Certain other companies, which are shown in detail on the Consolidated Company's Blue Print filed with the Commission, but which need not be considered for the purposes of this Chart, as they are not operated, and were merely bought for the purpose of acquiring their franchises.

TABLE No. 2.  
CONSOLIDATED GAS, ELECTRIC LIGHT AND POWER COMPANY.  
OUTSTANDING OBLIGATIONS.

	Direct Obligations Outstanding.	
	Maturity.	June 30, 1911. June 30, 1912.
Consolidated Gas Co. Consol. Mtge. 5% Bonds.....	July 1, 1939	\$3,400,000
Consolidated Gas Co. General Mtge. 4½% Bonds.....	Apr. 1, 1954	2,751,000
Consolidated Gas Co. Certificates of Indebtedness.....	1912-13	3,751,000 (A)
United El. L. & P. Co. 1st Consol. Mtge. 4½% Bonds.....	May 1, 1929	312,000 (B)
Consolidated Gas E. L. & P. Co. Gen. Mtge. 4½% Bonds.....	Feb. 14, 1935	4,428,000
Consolidated Gas E. L. & P. Co. 5% Gold Notes.....	July 1, 1913	10,831,000 (A)
		3,000,000 (A)
Baltimore Electric Co. 5% Bonds Guaranteed.....	June 1, 1947	\$24,972,000
Baltimore Electric Co. 5% Preferred Stock Guaranteed.....		\$3,491,000 (c)
Roland Park El. & Water Co. 5% Bonds Guaranteed.....	Feb. 1, 1937	1,000,000
		300,000
Less: Consol. Gas E. L. & P. Co. 4½% Bonds pledged as Collateral for		\$29,763,000
Balto. El. Co. Bonds.....		1,155,000
		\$28,608,000
		\$30,513,000
		1,155,000
		\$29,358,000
CAPITAL STOCK.		
	Outstanding.	
	June 30, 1911. June 30, 1912.	
Consolidated Gas El. L. & P. Co., Common.....	\$7,100,034	\$7,800,034
Consolidated Gas El. L. & P. Co., Preferred.....	6,360,054	6,360,054
	\$13,460,088	\$14,160,088

RECAPITULATION.

	June 30, 1911.	June 30, 1912.
Outstanding bonds and other obligations.....	\$28,608,000	\$29,358,000
Outstanding preferred and common stock.....	13,460,088	14,160,088
	<u>\$42,068,088</u>	<u>\$43,518,088</u>

NOTE A.—In addition to the Consolidated Gas Company General Mortgage 4½% Bonds, and to the Consolidated Gas, Electric Light and Power Company General Mortgage 4½% Bonds, which are thus outstanding, certain bonds of these issues are also (a) pledged to secure the \$3,000,000 5% Gold Notes, due July 1, 1913, (b) in the Company's Treasury, (c) unissued, to wit:

a. Pledged as collateral for \$3,000,000 Gold Notes:	
Gas Gen. Mtge. 4½% Bonds.....	\$1,787,000
Power Gen. Mtge. 4½% Bonds.....	1,722,000
	<u>\$3,509,000</u>

Balto. Electric Co. 5% Bonds also pledged as collateral for same loan.....

Total pledged securities.....	\$3,961,000
b. In Company's Treasury:	
Gas Gen. Mtge. 4½% Bonds.....	\$250,000
Power Gen. Mtge. 4½% Bonds.....	78,000
	<u>\$328,000</u>

Available Treasury Bonds.....	\$328,000
c. Unissued Bonds:	
Power 4½% Gen. Mtge. Bonds.....	\$2,369,050
	<u>\$2,697,000</u>

Total Treasury and Unissued Bonds.....

NOTE B.—\$78,000 of this issue was redeemed July 1, 1912.

NOTE C.—The Company owns \$230,000 Baltimore Electric Co. 5s, in addition to the \$3,491,000 of these bonds outstanding. These \$230,000 Bonds are part of the \$452,000 Baltimore Electric Co. 5s pledged as collateral for the \$3,000,000 Gold Notes, the remaining \$222,000 Baltimore Electric Co. 5s being Treasury Bonds of the Baltimore Electric Co.

It may be assumed as a fact in all corporate financing that the stock and bonds will exceed the physical value of the plant when it is completed and ready for business and before the processes of depreciation have set in. This is necessarily so, because a number of legitimate outlays have been made which are properly chargeable to capital account; and in a case where it was evident that good business judgment and economy in construction were exercised, and that securities had been issued for actual value only, some intangible values could be allowed without exciting criticism. But it is apparent from the testimony in this case that such a condition does not prevail in the affairs of the respondent Company. For example, the Consolidated Gas Company of 1880 was a merger of the Gas Light Company of Baltimore (chartered in 1816), and the Peoples Gas Company (chartered in 1860), and the Consumers' Mutual Gas Light Company (chartered in 1876). The combined capital (stock and bonds) of these Companies at the time of consolidation amounted to \$8,300,000.00. Assuming that this amount of capital represented actual legitimate investment, it is inconceivable that the mere execution of the consolidation papers could have increased the investment in either tangible or intangible property values to the extent of \$1,300,000.00. But it appears as a matter of fact from the statement of actual investment as shown by the books of the Company (Ford, Bacon & Davis Appraisal, page 42) that the physical value at that time was \$4,776,922.00, which shows that the old securities exceeded the apparent investment by the sum of \$3,523,078.00, or 73.75%. The apparent investment was less than 50% of the new securities. Even upon the assumption that the estimate of Ford, Bacon & Davis covered only the value of units installed, without allowance for overhead expenses, it is manifest that a considerable over issue of securities had taken place before the consolidation, some part of which may, perhaps, be accounted for by discount on bonds and abandoned and obsolete property, of which, however, we have no record; and the over issue was increased in the consolidation, to the extent of \$1,300,000.00.

The same condition obtained in the subsequent consolidations of 1888, 1899 and 1905-6. The final result is that in adjusting the interests of the security holders of the various companies there was an increase of \$9,850,638.00 which does not represent actual investment in any form, if we assume that the securities outstanding before the consolidations represent the cost of the properties—an assumption which is very liberal to the Company.

In the view we take of this case we do not think it is necessary to follow in detail the figures of the consolidations, but the consolidation of the Electric Companies in 1905 presents some features which cannot be wholly ignored. The outstanding shares of common stock which the promoters of the consolidation owned in the constituent companies amounted to \$8,174,050.00 par value, and there was issued in exchange for this common stock, new common and preferred stock and new bonds aggregating \$18,361,000.00 par value, an increase in the par value of the outstanding securities of \$10,186,950.00, which represented no property value whatever, and of this increase \$6,361,000.00 consisted of bonds which created a fixed annual charge upon the revenues of the Company which has been paid ever since. In the final consolidation in 1906, when the Gas Company was actually merged with the Electric Company, there was a decrease in the outstanding stock of \$3,547,880.00 par value, which left a net increase in outstanding securities resulting from both consolidations of \$6,639,070.00. While the stock was decreased by the amount above stated the \$6,361,000.00 increase in bonds issued in 1905 were further increased to \$7,102,000.00, all of which are still outstanding. The increase resulting from former consolidations brings the total increase in the par value of outstanding securities up to \$9,850,638.00, of which \$9,672,000.00 now consists of bonds, and this without reference to the actual investment which these securities are supposed to represent.

It is strenuously argued by counsel for the Company that these increases were justified as the only means of getting

rid of intolerable conditions resulting from competition, not only as to the gas service in 1880 and 1888, but also the discomfort and expense to the public growing out of the disruption of the streets. As to the electric division, however, neither of these features was so pronounced, and competition had not been a serious disturbing factor for some years prior to 1906 in the electric division, and had been altogether removed from the gas division for eighteen years. We realize that the problem, viewed from the financial standpoint, was a difficult one to solve, and it may be that under the conditions existing at the time, with no supervisory body to check the tendency to recoup losses through the increase of securities, and not so much as a hint of a legislative rule on the subject, over-capitalization was inevitable—and probably to the extent that it was thought the public patience would bear. Certainly the consolidation upon proper terms was desirable from the standpoint of the consumer and the community at large, for it was not to be expected that in the fierce contention of the gas companies for supremacy—doubtless with the hope of ultimate monopoly—either money or effort, beyond urgent necessities, would be expended to produce the efficiency which a decent regard for the interests and rights of the public demand. However this may be, the action then taken in regard to financing the consolidations would not have been approved by this Commission or by any body of impartial men who had investigated the facts and had authority to control the situation. And we are not prepared now to say that there is any obligation on the Commission, growing out of the conditions that forced the consolidations, to recognize that action as a just and equitable investment upon which rates for service should be based.

Early losses in both the gas and electric divisions are urged as proper items for capitalization, especially where the losses have been caused by competition which the public not only permitted but encouraged. But there are two sides to this aspect of the subject. The public is not apt to quarrel with service which is in the main satisfactory—and was probably

less so in the early days of gas corporations—and while there doubtless were some interests jealous of the success of the pioneer company and anxious to share its field or profit, it may well be that its attitude toward the public and its efforts to serve were such as to create a feeling of discontent and resentment and open the door to competition. In other words, in the absence of proof of the causes which led to the formation of the rival enterprise, it is unfair to charge the public of that day with the whole responsibility for competition and to place all of the resulting burden upon the shoulders of the public of to-day. Moreover, the possibility of competition was one of the risks which capitalists of those days knew they must face, and for a very considerable period of time rate wars in all kinds of public service corporations were common occurrences for which, in the long run, the public paid an enormous price.

If we were dealing with a case in which the affairs of a corporation were matters of record from the beginning and the losses were known to be such only as resulted from the indisposition of a community to change from old to new methods, some means of recoupment, either by conservative capitalization or by an allowance in rates which would by degrees pay the passed dividends, might be permitted. This was generally the condition with which the Railroad Commission of Wisconsin dealt in the cases upon which the respondent Company herein relies. We are asked to do so upon what seems to us to be insufficient evidence to justify, upon the terms stated, the claim which has been urged with so much ability and earnestness.

But even if we were inclined to follow the precedent set in some States upon this feature of intangible values, we should still feel obliged to regard the successive increases in capital resulting from the several consolidations, and to the extent to which they are reflected in bonds and protected by law, as an offset to early losses, if, indeed, those increases were not intended to be, as we have intimated, for that purpose.

It will be necessary to recur to the subject of capitalization in a subsequent section of this opinion, but we thought it



best to state this general conclusion at the outset, as it may aid us as the discussion proceeds.

#### REPRODUCTION.

For reasons which will appear later, we do not think it necessary to go into an elaborate analysis of the appraisal of the Company's property made by Ford, Bacon & Davis and of the criticisms of that appraisal made by Professor Bemis and Mr. Scott. The cost of reproduction new of the Company's plant is one of the tests of fair value applied by the Supreme Court in the much overworked case of *Smyth vs. Ames* (169 U. S., 466), which is itself by no means so free from obscurity as to be an infallible guide in rate cases. The fact is, that appraisals of this kind are of comparatively recent origin, and have been, to some extent at least, the outgrowth of public regulation, and practically nothing has been done to establish a method or plan upon which they shall be made. The results derived from them depend largely upon the point in view, the training, the economic education and preconceived notions of the appraisers and the purpose to be accomplished by their work. They have a value as checks upon the information derived from other sources, but it is safe to say that in large and complicated matters, such as we are dealing with here, conclusions based upon the findings of contending expert appraisers alone would be little better than a guess at the true value of a given property. In this case, we have extreme views upon both sides, each, no doubt, honestly, arrived at, and both, certainly, adroitly maintained. If estimates of the cost of reproduction new are to be a feature of investigations made by regulating bodies, those bodies must, in order to accomplish satisfactory results, establish some sort of standard along the lines of rules for uniform accounting, as guides in making such estimates. The formulation of such a standard presents many difficulties and an inflexible rule as to details is impracticable; but such matters as contractors' and sub-contractors' profits, promotion, discount on securities and over-

head charges generally, about which, usually the fiercest contest is waged, may well engage the serious attention of commissions as a step toward the saving both of time and money—to say nothing of vexation—expended in investigations.

The Ford, Bacon & Davis estimate of the cost of reproduction new is, of course, based upon the conditions that exist to-day, except that it supposes Baltimore to be without gas and electric plants, and, therefore, provides for contingencies which might be encountered in an entirely new field, which experiences elsewhere suggest as proper matters to guard against. The conditions under which the supposed new plants are assumed to be constructed never did exist and, in all probability, never will exist in any city of the size and importance of Baltimore. The inventory leaves nothing to be desired in matters of detail, but we are led to believe from the testimony that in pricing the inventory the Company's books were relied upon to a considerable extent, and that incidentals, contractors' profits, etc., were included in the book costs upon which overhead charges were duplicated, thus largely increasing the final figures. In the following table the various estimates are given in condensed form. The first two columns are the estimates made for the Company by Ford, Bacon & Davis and Howard Bruce for the Gas Division, and Ford, Bacon & Davis and W. H. Blood, Jr., of Stone & Webster, for the Electric Division, columns three and four are the estimates of James B. Scott and Edward W. Bemis for both divisions, made for the Complainants. The Bruce estimate contains no allowance for preliminary organization of the Gas Division. If the Ford, Bacon & Davis allowance for this item were included, the Bruce estimate would total \$17,738,296.00. In items 2 and 7 Bemis includes items 5 and 10 in the other columns. Blood's estimate consists entirely of a check of the overhead allowances of Ford, Bacon & Davis in the Electric Division. The estimates of land values (item 1) were made by Caughy for the Company, and Lindsay for the Complainants.

TABLE No. 4.  
COMPARISON OF ESTIMATES OF REPRODUCTION NEW.  
GAS DIVISION.

	F. B. & D.	Bruce.	Scott.	Bemis.
1. Land used and not used.....	\$1,432,177	\$1,432,177	\$910,034	\$910,034
2. Construction and Equipment.....	7,948,855	9,560,384	7,376,738	7,863,453
3. Incidentals, Sub-Contractor, General Contractor, Engineering and Superintendence Interest and Taxes, Legal Expenses, Permanent Organization, Preliminary Organization Expenditures, (61.7% of Land, Construction and Equipment, or, excluding land, 72.8%).....	5,792,538	3,797,027	1,706,966	712,464
4. Working Capital.....	854,252	854,252	714,252	529,290
5. Additions from December 31, 1910, to June 30, 1911.....	144,708	144,708	144,708	.....
Total, Gas Division.....	\$16,172,530	\$15,788,548	\$10,852,698	\$10,015,241
ELECTRIC DIVISION.				
6. Land used and not used.....	\$615,382	Blood.	\$417,558	\$417,558
7. Construction and Equipment.....	5,508,468	\$615,382	5,490,505	6,226,194
8. Incidentals, Sub-Contractor, General Contractor, Engineering and Superintendence Interest and Taxes, Legal Expenses, Permanent Organization, Preliminary Organization (70.1% of Land, Construction and Equipment or, excluding Land, 77.9%).....	4,293,146	631,068	986,301	499,003
9. Working Capital.....	766,068	129,508	711,068	370,710
10. Additions, from December 31, 1910, to June 30, 1911.....	129,508	.....	129,508	.....
Total, Electric Division.....	\$11,312,572	\$11,510,597	\$7,734,940	\$7,513,465
Grand Total.....	\$27,485,102	\$27,299,145	\$18,587,638	\$17,528,706
Depreciation—Gas.....	.....	.....	2,471,994	1,445,127
Electric.....	.....	.....	827,010	570,969
Depreciated Value.....	.....	.....	\$3,299,004	\$2,016,096
	\$27,485,102	\$27,299,145	\$15,288,634	\$15,512,610

It should be noted that the Ford, Bacon & Davis appraisal was made for the Company for use, among other things, in cases which might come before the Public Service Commission for investigation. Work on the appraisal was begun in the spring of 1910, shortly after the organization of the Commission, and is made up as of December 31st, 1910. It proceeds upon the theory of the construction new of the entire properties of the Company, and assumes that a General Contractor would be employed to push the work to completion in two and a half to three years. It embraces elaborate plans for preliminary organization, and provides this for both the gas and electric divisions, although both properties are owned by one Company.

Taking up those features of the appraisals, which seem to require review, we find that Ford, Bacon & Davis adopt the estimate of Mr. Caughy, and Mr. Scott adopts that of Mr. Lindsay, and a comparison shows:

	Caughy.	Lindsay.
Gas Land used.....	\$1,072,879	\$910,034
Gas Land not used.....	359,298	387,183
Electric Land used.....	611,382	417,558
Electric Land not used.....	4,000	4,000
	<hr/>	<hr/>
	\$2,047,559	\$1,718,775

The difference of \$328,784 in these estimates is mainly due to the different methods pursued by the appraisers, Caughy estimating what he thought it would cost the Company to obtain the properties at the present time and under the conditions of hold up, etc., which it might encounter in its dealings. Lindsay estimated the market value, and as to that he and Caughy were in practical agreement. We think Lindsay's is the proper valuation. Scott rejects the land not used. To some extent this land is used by the Company, in connection with the buildings thereon, for storage purposes, while other portions of it are rented out and produce a revenue. A majority of the Commission think that it should be included in the appraisal.

In structures used we adopt the figures of Lindsay, and for the reasons assigned in relation to land not used, we allow structures not used.

Items 3 and 8 in the table are those in which the widest differences exist between the several estimates. They include for the two divisions incidentals, sub-contractors' profits and expenses, general contractors' expenses and profits, engineering and superintendence, interest and taxes during construction, legal expenses, permanent organization expenses and preliminary organization expenses. The totals are, for the gas division, Ford, Bacon & Davis, \$5,792,538.00, Scott, \$1,706,966.00, and for the electric division, Ford, Bacon & Davis, \$4,293,146.00, Scott, \$986,301.00. Scott eliminates from the Ford, Bacon & Davis estimate general contractors' profits and preliminary organization, which amount to \$2,816,191.00 in the gas division, and \$2,094,089.00 in the electric division.

The items of preliminary organization include:

(1) Time and expense securing rights and organizing, (2) cost of obtaining capital, (3) interest on (1) and (2) during construction period, (4) cost of consolidating gas and electric divisions. For the gas division the allowance is \$1,949,748.00, or 12 per cent. of total value, 18.36 per cent. of land and structures, and 21.22 per cent. of structures alone, as ascertained by them. In the electric division the allowance is \$1,434,672.00, or 12.68 per cent. on total value, 19.8 per cent. on land and structures, and 21.62 per cent. on structures alone. For the two divisions the allowance is \$3,384,422.00, or 12.35 per cent. of the total value, 19 per cent. of land and structures, and 21.39 per cent. of structures alone. Inasmuch as we are considering reconstruction new, we think Mr. Scott erred in excluding altogether an allowance for preliminary organization. A scheme so large, involving an expenditure of many millions of dollars, could not be brought to the point of beginning construction without spending a considerable sum of money in the preliminary steps. But where the valuation is made upon an entirely new plant, it must be assumed that a new Company would undertake the work,

and that the preliminary expenses would be materially reduced, as two Companies would hardly be formed for the mere purpose of consolidation. Where, however, a monopoly exists, and the field, as in this case, is an inviting one, the risk of the enterprise is reduced to the minimum—unless it is considered that a community that lived until the year 1913 without either gas or electricity offered no field at all for investment in such utilities. At all events, we consider the allowance too high, and that an allowance of 50 per cent. of the aggregate for preliminary organization would be ample.

The extent to which the base costs used in the appraisal taken from the Company's books carry "Force Account" construction, which carries general contractors, sub-contractors and incidentals cannot be accurately computed, but such items aggregating \$4,167,844.00 of actual cost to the Company were found by Mr. Murrie and Mr. Scott, which Ford, Bacon & Davis took as base costs and upon which they made a further allowance of \$1,189,942.00, or 28.5 per cent., for contractors and incidentals. This amount must be deducted, of which \$598,606.00 belongs to the gas division, and \$599,336.00 belongs to the electric division.

A majority of the Commission holds that as between a general contractor and sub-contractors the general contractor should be retained, and consequently the allowance for the sub-contractors is deducted.

The sum of these deductions is \$2,780,553.00 for the gas division and \$2,353,023.00 for the electric division, a total of \$5,133,576.00.

Ford, Bacon & Davis do not deduct anything for depreciation, for the reason that, in their judgment, the adjustment of the property, the elimination of "many elements of accident that exist in the first aggregation of an apparatus that goes to make up a plant," and the excellent maintenance of the Company's plant, offset the actual depreciation that may have accrued. We think there is something in this view, but there is nothing in the case from which we can estimate the appreciated values as an offset to depreciation except the opinions

of Mr. Uebelacker and Mr. Wagner. There is no doubt that the property is well maintained and thoroughly efficient, which indicates that the actual depreciation is not as great as the life tables, which are largely made up of averages, may figure out. We think it should not exceed the amount figured out by Dr. Bemis as "accrued depreciation," which is \$2,016,096.00. The result of all this is:

Ford, Bacon & Davis Appraisal.....	\$27,485,102.00
Deductions .....	\$5,133,576.00
Depreciation .....	2,016,096.00
	<hr/>
	7,149,672.00
	<hr/>
	\$20,335,430.00
Additions to June 30th, 1912.....	1,081,984.00
	<hr/>
	\$21,417,414.00

It is frankly confessed that there are elements of uncertainty in this finding, growing out of similar elements in the rival appraisals, and the Commission was without the means to pursue further investigation after the hearings closed. There is, however, a provision of the law, Section 30, bearing upon the subject of valuations, which will be considered presently, which probably rendered such further investigation unnecessary in arriving at a determination of rates.

#### EASEMENTS.

A subject of contention in the trial of the case was the valuation of the easements owned by the Company in the streets of Baltimore and which, for the purposes of taxation, are assessed at \$5,000,000.00. The counsel for Complainants contended that the easement was in the nature of a franchise—in fact, grows out of the franchise—and as the law forbids the capitalization of franchises, it is not proper to include this value in a rate case as an item upon which the Company should be permitted to earn a return, especially as no money was paid for it and it does not represent actual investment.

Counsel for the Company contended, on the contrary, that the Court of Appeals having decided that the easement is real property, and a value of \$5,000,000.00 having been placed upon it for the purposes of taxation, it was properly included in the assets of the Company as property upon which it is entitled to earn a return.

The matter was referred to the General Counsel of the Commission, who, in a careful opinion filed in the case sustains the contention of the Company.

In the judgment of the Commission the opinion of the General Counsel should prevail, but one of the members is not free from doubt on the subject. It is not deemed necessary to go into an extended discussion of it. Nor is it considered of special importance in determining prices, as it will be seen later that a definite amount of revenue is necessary.

The property value heretofore found is. \$21,417,414

Value of easements ..... 5,000,000

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\$26,417,414

#### BONDS.

Section 30 of the Public Service Commission Law clothes the Commission with power to ascertain the fair value of property of any corporation subject to the provisions of the Act and used by it for the convenience of the public, and provides:

“Every such valuation shall be so made and ascertained by the Commission that as far as possible it shall not disturb the value of bonds of any of said corporation issued prior to this Act.”

This provision is peculiar to the Maryland Law and has no counterpart in any law for the regulation of public service corporations that has come to our knowledge. It is a positive direction, binding upon the Commission. The opposing contentions are, upon the part of the complainants that “what the Legislature meant must have been not that the valuation but the rate of return should be such as not to disturb the



payment of the interest;" and on the part of the Company that "as far as possible" the value of the bonds as property shall not be disturbed.

The opinion of the General Counsel, to whom the question was referred, sustains the Company's contention, and in this view we fully concur. In addition to what the General Counsel says it should be noted that the proviso is contained in the section of the law which provides for valuation alone, and could, therefore, have had no direct relation to either the rate of return or the rates for service.

Exactly what the expression "as far as possible" means is not altogether clear, but without undertaking to speculate upon possible constructions of it, it is safe to conclude that in the absence of a wide discrepancy between the ascertained value of the property and the par value of the bonds issued against it, indicating either a grossly depreciated condition or unconscionable financial operations, the bonds should be protected. In the cases supposed it might be that a rate for service high enough to take care of fixed charges, would be so excessive as to make it impossible to protect the bonds without at the same time oppressing the public, and in that case the public interest would be paramount.

In the present case the practical question in this connection is, can we assume the par value of the bonds to be the value of the property and establish a rate of return which will provide for the legitimate needs of the Company and at the same time be reasonable to the public? Or (to reverse the proposition), can we take the ascertained value of the property and establish rates for service which will be just to the public and at the same time provide for the legitimate needs of the Company? This is the problem for the Commission to solve.

#### THE CREDIT OF THE COMPANY.

It was strenuously contended by the Company that nothing should be done that would tend to impair its credit, and that the standard established by financial circles requires that pub-

lic service corporations should earn, over and above operating expenses and depreciation, twice the amount of its fixed charges for interest upon bonds. That the credit of the Company should be maintained goes without saying, and in other parts of this opinion we have shown that this important matter has been kept in view. As to the other point, it may be stated that the rules governing financial operations and contended for by the Company emanate from those who control speculative capital as distinguished from strictly investment capital. Furthermore, the demand for net earnings 100 per cent. in excess of fixed charges is the maximum, and is doubtless placed high for reasons best known to the financiers, among others, perhaps, the price at which corporations can float their securities.

Where the amount of stock and bonds is kept on a basis of fair equality which would certainly stimulate attention on the part of stockholders and directors to economical management, so high a standard as 100 per cent. excess, would not be necessary, and in fact is not now demanded under prevailing conditions, by a number of reputable banking houses. The conditions suggested would, in our judgment, tend to attract the funds of those persons who are looking for permanent investments and save corporations much money which is now lost in discounts and imposes upon the public an additional burden for amortization.

From disclosures in the course of the hearings this seems to be the goal toward which the present management of the defendant Company is working—as evidenced also by its obtaining authority from the Legislature to issue debenture stock—a policy which has our approval and from which, we believe, the public will reap substantial benefit.

#### THE FAIR RATE OF RETURN.

The rate of return should, primarily, be based upon the actual investment in the property and should bear some relation to the rate of interest allowed by law, as that is the legislative standard by which the just return for borrowed

money is fixed. In ordinary transactions, however, a fixed ratio is established which does not vary with the circumstances of the borrower, and assuming that the borrower is solvent the payment of the interest is certain. But in the case of public service corporations, whose revenues are subject to fluctuations, some latitude must be allowed so that the deficits of one year may be made good from the larger profits of another year and preserve an average return which will be fair and just and attract capital for the extension and improvement of the corporations' property. This supposes a concern whose investment is conservative but ample to give good service. But even in the case of a public service corporation whose financial history, extending over many years, is characterized by practices which cannot be approved, but which cannot be repeated under the regulation to which it is now subjected, some consideration must be given to this feature of the case. Whatever is done now must bear fruit in the future. The citizens of Baltimore are dependent upon the defendant Company for two of the prime necessities of modern life, and its extension to meet the growing demand for its products is one of the conditions upon which the growth of the city and the multiplication and development of its industries depends. That the sins of over-capitalization impose a burden upon the people is undeniably true, and they cannot be too strongly condemned. But the burden would not be lightened, but made heavier, if conditions should be imposed upon the present management of the Company, which is not responsible for the things that we complain of, which would seriously impair its ability to meet the just demands of the community for service.

The only purpose of this discussion is to show that in applying remedies we must keep in mind not only the conditions which we are striving to correct, but also, as far as our foresight permits, the consequences that may follow from the remedies themselves.

That the able counsel for the complainants recognized the force of the foregoing is evident, we think, in the quotation he makes (Brief, page 208) from the opinion of the New

York Public Service Commission, First District, in the Queen's Borough Gas and Electric Company case, decided June 23, 1911, as follows:

"Various standards have been suggested for determining the fair rate of return. The one which in our opinion is properly applicable to this case is that the rate should be such that investors would be induced to provide the funds with which to construct and extend a gas and electric plant within the area in question. If the State were to fix a rate below this standard, capital could not be secured. If the investment were made before the State acted, the original capital might be forced to remain, but additional capital could not be secured unless necessary to protect the first outlay."

The law of the State under which this Commission acts, has legalized the bonds of the Company issued prior to the Act, at least to the point of providing for the payment of interest upon them. The bonds issued since the consolidation, including those authorized by the Commission, have been issued in accordance with the strict terms of the mortgages securing them and represent actual expenditures for extensions and improvements, and are not assailed in these proceedings. We think the return allowed should protect them, and we think it can be done without imposing rates which are oppressive or unreasonable, and which will compare most favorably with rates in the leading cities of the country.

We are not to be understood as agreeing with the contention that a rate is not unreasonable so long as it falls short of being prohibitive, or that the earnings of the corporation have no relation to rates so long as they do not reach the point of extortion; and we wish to emphasize this by repeating that the legislative standard of six per cent. with some margin for uncertainties furnishes a rule which in a general way should be controlling. A number of reasons might be given for this opinion, but it is unnecessary to prolong the discussion. It is enough to say that a rate that barely

escapes the level of confiscation will in a short time produce a condition of squalor, and squalor spells inefficiency. The rate that allows returns that are unreasonably high when compared with returns from other useful lines of business, in time produces arrogance, which in turn arouses hostility upon the part of the public that may lead to disastrous results.

### THE NEEDS OF THE COMPANY.

The first step in determining the rates for service is to find out the obligations the Company must meet in order to carry on its business and perform its duty to the public. For the purposes of this part of the discussion it is assumed that any change in rates will take effect July 1, 1913, and the estimate is for the year ending June 30, 1914. The last complete year we have is the one ending June 30, 1912, and the percentage of increase of 1912 over 1911 is first applied to 1913 in order to obtain the amounts upon which the increase for 1914 should be computed. By this process we obtain the following result:

Operating Expenses and Taxes.....	\$ 3,046,288.00
Increase in Price of Oil.....	206,925.00
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Total Operating Expenses.....	\$ 3,253,213.00
Fixed Charges.....	1,651,063.00
Reserve for Depreciation, etc.....	500,000.00
Contingencies .....	150,000.00
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	\$ 5,554,276.00

The item of increase in the price of oil, included in operating expenses, requires the explanation that late in December the Commission received from a Washington Company owning extensions in Maryland territory, a petition asking leave to file a revised schedule advancing rates, based upon the increase in the price of oil, and information obtained from the Consolidated Company was that the proposed advance

would increase the cost of oil consumed by it to the amount stated.

Deducting the operating expenses, we have a remainder of \$2,301,063.00 for fixed charges, depreciation and contingencies, which is equivalent to 8.7% of the allowed value of the property, including easements, and 7.9% of the par value of the outstanding bonds.

In addition to the actual need for this amount of money (\$5,554,276), it is a matter of evidence in the record, as well as of general knowledge, that the Company is compelled to enter upon large financial transactions in the next few months in order to take up its floating debt and to refund \$3,000,000.00 of bonds maturing July 1, 1913; and it must also be in a position to finance the extensions which the growing demands of the city require. We cannot escape the conclusion that, in view of all the circumstances surrounding this case—and especially justice to the community which our order is to affect—it would be “penny wise and pound foolish” to restrict the Company by a radical reduction at once to the bare means of subsistence, when a small allowance which might or might not result from the rates for service when applied, would remove all apprehension of poor service to consumers and of loss to investors. It seems to us that this is the kind of consideration the Legislature had in mind when it provided in Section 37 that “in determining the price to be charged for gas or electricity the Commission may consider all the facts which in its judgment have any bearing upon a proper determination of the question, although not set forth in the complaint and not within the allegations contained therein.”

#### THE RATES.

In view of what has just been said about the needs of the Company, a number of calculations have been made to ascertain a rate that would adequately provide for them, and looking to the year ending June 30, 1914, alone, we find that rates of eighty (80) cents net per 1,000 cubic feet for gas,

and eight and a half ( $8\frac{1}{2}$ ) cents primary rate per K. W. H. for electricity, come nearer than any others to meeting the conditions which a proper regard for the service, the public and the Company demand.

In ascertaining revenue we have first obtained the probable increase in sales of gas and electricity, using the percentage of increase of 1912 over 1911 and applying it to 1913 and 1914. On the sales so obtained we have applied the rates of 80 cents for gas and  $8\frac{1}{2}$  cents for electricity. The result appears as follows:

Revenue from gas at 80 cents net.....	\$3,127,303.00
Revenue from electricity at $8\frac{1}{2}$ cents primary rate .....	2,964,574.00
	<hr/>
	\$6,091,877.00
Operating expenses .....	3,253,213.00
	<hr/>
Net revenue .....	\$2,838,664.00
Fixed charges .....	\$1,651,063.00
Reserve for depreciation	500,000.00
Contingencies .....	150,000.00
	<hr/>
	2,301,063.00
	<hr/>
Balance .....	\$537,601.00

It appears from this statement that the balance of \$537,601.00, which is obtained by close figuring on expenses, is about two-thirds of the amount required to pay dividends on both kinds of stock, and if only the dividend upon the preferred stock is paid from the balance, the remainder would not be too large a sum to carry to surplus. On the other hand, it should be noted that in the estimated revenue no account has been taken of the increased sales which may result from the reduction in rates. In any event it would be some months after the reduction becomes effective before increased sales would be reflected in revenue. What it may be is a mere guess, upon which it would be dangerous to base extreme action by the Commission.

A rate of 75 cents for gas would have provided for the bare necessities of operation, but we have already stated the reason why we think a lower rate would be unwise. The subject was fully discussed in conference, and the conclusion was reached that while we might safely look forward to a further reduction at no distant day, it might seriously hamper the Company and impair the service to make a radical cut at one blow. This is the policy which Commissions have generally pursued. With the knowledge we now have of the Company's affairs, we can certainly maintain such supervision as will enable the Commission to act promptly if and when the conditions justify it.

Another consideration prompting this rate is that it affords what we consider a fair basis upon which the "Sliding Scale" may be established, which a lower rate might have defeated altogether. We believe the sliding scale offers the best solution now in sight for the regulation of rates of gas and electric corporations, when the initial rate and the capitalization are equitably adjusted. In closing their brief the counsel for the Company say: "The Company is now prepared to consider with this Commission such a sliding scale for the automatic adjustment of charges for gas and electricity and the dividends to be paid to the stockholders of the Company; this scale to be on the basis of the present rates for gas and electricity and the present rates of dividends as the starting point; and the principle of automatic adjustment being a division between the public and the stockholders of the Company of the future surplus earnings of the Company." In view of what had transpired in the long and vigorous trial of the case, the Commission did not feel that it could then take up the subject of the sliding scale upon the terms suggested with entire justice to the public. Upon the basis of the rates here found to be just and reasonable, the Commission will be glad to confer with the Company in an effort to adopt the sliding scale as the end of costly controversies and the establishment of amicable relations between the public and the corporation, and it believes that such adjustment would be far more satisfactory



than any other. Should efforts in this direction fail, the remedy of further reductions remains to be applied.

In reaching its conclusions, the Commission has avoided the multitude of details that were introduced in the record and necessarily discussed in the briefs of counsel, and confined itself to those features of the case which impressed it as controlling the question of rates—and has endeavored to compress its opinion into the smallest possible compass. The whole case has been studied as carefully as our limitations and proper attention to other matters before the Commission permitted, and the outcome is the best that our deliberate judgment suggested.

An order should be entered in accordance with the findings.

Cases Nos. 175,176—Order No. 1037.

These cases being at issue upon complaints and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, filed an opinion containing its findings of fact and conclusions thereon, which said opinion is hereby referred to and made a part hereof;

It is therefore, this thirteenth day of January, in the year nineteen hundred and thirteen, by the Public Service Commission of Maryland,

*Ordered*, 1. That the Consolidated Gas, Electric Light and Power Company of Baltimore be, and is hereby, ordered to put into effect a primary rate of eight and a half ( $8\frac{1}{2}$ ) cents per Kilowatt hour ( $8\frac{1}{2}$ c. per K. W. H.), with a minimum charge of one dollar per month, said rate to become effective on and after the first day of July, nineteen hundred and thirteen, and continue in force until the further order of this Commission.

2. That said Consolidated Gas, Electric Light and Power Company be, and is hereby, directed to revise the terms and conditions under which electric current is supplied to its customers under the several schedules now on file with the Commission, to conform to the primary rate hereby established, subject, however, to the approval of the Commission.

Case No. 177.—Order No. 1038.

This case being at issue upon complaints and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, filed an opinion containing its findings of fact and conclusion thereon, which said opinion is hereby referred to and made a part hereof,

It is, therefore, this thirteenth day of January, in the year nineteen hundred and thirteen, by the Public Service Commission of Maryland,

*Ordered*, 1. That the Consolidated Gas, Electric Light and Power Company of Baltimore be, and is hereby, ordered to put into effect a rate of ninety (90) cents gross, and eighty (80) cents net, if paid within ten days after the reading of the meter, for each thousand cubic feet of gas supplied by it to its customers in the territory now served by it or that may be served by it hereafter, until the further order of this Commission in the premises, said rates to become effective on and after the first day of July, nineteen hundred and thirteen.

2. That said Consolidated Gas, Electric Light and Power Company of Baltimore be, and is hereby, directed to file with this Commission on or before the first day of June, nineteen hundred and thirteen, a schedule of wholesale rates for gas based upon the amount consumed for power and other purposes, which rates shall be subject to the approval of the Commission, and, when approved, shall become effective on said first day of July, nineteen hundred and thirteen.

## NEW YORK.

### Public Service Commission—First District.

IN THE MATTER OF THE REHEARING UPON THE APPLICATION OF THE NEW YORK RAILWAYS COMPANY, AS TO THE ORDER MADE BY THE COMMISSION ON FEBRUARY 27, 1912, RELATIVE TO THE PLAN FOR REORGANIZATION OF THE METROPOLITAN STREET RAILWAY COMPANY AND THE PROPOSED ISSUE OF SECURITIES IN ACCORDANCE THEREWITH.

#### Case No. 1305.

IN THE MATTER OF THE ORDER\* MADE BY THE COMMISSION ON FEBRUARY 3, 1912, RELATIVE TO THE PLAN OF REORGANIZATION OF THE THIRD AVENUE RAILROAD COMPANY.

#### Case No. 1181.

**Reorganization of Corporations—Extent of Commission's Powers—Stock Corp. L., §§ 9, 10, Construed.**—From a consideration of the Provisions of stock Corp. L., §§ 9, 10, and the decision of the New York Court of Appeals in *People ex rel. Third Ave. Ry. Co. v. Commission for the First District* (203 N. Y. 299), it must be regarded that at the time the N. Y. Rys. Co. was organized under the "reorganization statute" above referred to, the Commission had the power only to determine (1) whether the proposed stock and bonds were to be issued under and in conformity with the provisions of the statute, (2) whether the new corporation had been duly organized and had become vested with the title to the property and franchises of the old corporation, (3) whether the plan of reorganization was being carried out, and (4) whether the total par value of the new securities exceeded the total par value of securities of the company to whose property and franchises it had succeeded, and any new money contributed.

**Accounts and Funds—Amortization of Difference Between Par Value of Securities Called For by Reorganization Plan and Fair Value of Property—Powers of Commission.**—In authorizing the issue of certain bonds and stock by the N. Y. Rys. Co., a corporation formed under Stock Corp. L., §§ 9, 10, and consenting to the execution and delivery of two trust mortgages to secure the same, the Commission found that the face value of the new securities exceeded the fair value of the property and assets of the new corporation by as much as \$16,500,000, and that the securities were therefore to be issued at a discount of that amount. The Commission therefore made an Order requiring that this impairment, which was in the nature of a discount upon securities, should be amortized by the annual setting aside of an adequate sum out of the com-

\*See Commission Leaflet No. 3, page 29.

pany's income. It appeared, however, from the Court of Appeals' decision as to the effect of the statutes in force at the time the N. Y. Rys. Co. was formed, that the character and amount of securities issuable by such a corporation were such as might be agreed upon by the purchaser at the foreclosure sale and the creditors to whom by his plan he gave recognition, provided only the aggregate was not greater than the amount of the securities of the former company plus any cash put in, and that the securities as to face amounts were authorized entirely without regard to the property acquired by the company and were issuable under the authority of the statute and not, so far as their amount or character is concerned, under any real control of or dependence upon the Public Service Commission. *Held:* That while the Commission is of the opinion that the N. Y. Rys. Co. ought to provide a fund for this purpose, nevertheless, upon a careful reconsideration, it appears that the Commission was without authority to require the deficiency to be made up or amortized.

**Accounts and Funds—Payment of Operating Expenses, Depreciation Interest and Discount Out of Income.**—The New York Court of Appeals has many times held that operating expenses should be borne out of income, and that depreciation, interest and discount should be borne out of income in like manner as operating expenses.

**Accounts and Funds—Charging of Outlays and Crediting of Receipts to Particular Funds—Powers of Commission—P. S. C. L., § 52, Construed.**—The Commission is authorized by P. S. C. L., § 52, to prescribe by an Order, after a hearing, the accounts in which particular outlays and receipts shall be entered, charged or credited, even though, after a receipt or expenditure has been so credited or charged there will be less money shown on the books as surplus applicable to the payment of dividends and in consequence fewer dividends out of capital will thereafter be paid.

**Accounts and Funds—Requiring Reserve Fund to Provide for Maintenance, Repairs, Renewals and Depreciation—Order Upheld on Rehearing.**—Upon full reconsideration of the Order made by the Commission on February 27, 1912, requiring the establishment of a reserve fund to provide for maintenance, repairs, renewals, depreciation, etc., the Commission is of the opinion that the Order is within the power of the Commission, is fully sustained by the decisions of the New York Court of Appeals, and is fully justified by the evidence in the case.

Hearings closed September 23, 1912. Opinion adopted December 10, 1912.

## OPINION.

The rehearing in Case No. 1305 was upon the application of the New York Railways Company, and related to so much of the Order made in that case on February 27, 1912, as required the establishment of certain amortization and reserve funds.

The Order referred to was printed at page 125 *et seq.* of this volume.

The facts in relation to the matter appear more fully in the Opinion adopted at the time the Order was entered and in connection therewith. This Opinion is reported at page 113 *et seq.* of this volume.

The Order entered by the Commission, on December 10, 1912, in pursuance of the rehearing, provided as follows:

"New York Railways Company, intervenor herein, having presented to the Commission its petition in writing dated and verified March 29, 1912, applying for a rehearing in respect to the matters determined in and by the order of the Commission made and verified herein February 27, 1912, providing for the establishment and maintenance by said company (1) of a fund to make up the difference between the value of its property mortgaged and the face value of bonds issued under its mortgages and the par value of stock of said company, and (2) of a fund for maintenance and depreciation accruing on and after January 1, 1912, and, sufficient reason therefore having been made to appear, the Commission having by order made and filed herein April 5, 1912, granted upon said petition a rehearing, and such rehearing having come on before the Commission, Honorable Milo R. Maltbie, Commissioner, presiding, the said New York Railways Company appearing by Richard Reid Rogers, Esquire, and William M. Coleman, Esquire, and the Commission being of opinion after said rehearing and a consideration of the facts herein and of the arguments and briefs of Counsel for said Company that said order is in part unwarranted by law and should be changed as hereinafter set forth, it is

"Ordered, that said order of the Commission made and filed herein February 27, 1912, be and the same hereby is changed to read as follows:

"Section I. Whereas, an application dated and verified December 27, 1910, was made to the Public Service Commission for the First District by Alexander J. Hemphill, Donald Mackay, Edward H. Ladd, Jr., and Henry Evans as a committee of holders of General and Collateral trust five per cent. bonds of Metropolitan Street Railway Company, issued under a mortgage made by said Company, and dated February 1, 1897, to Guaranty Trust Company of New York, as Trustee, and by Edwin S. Marston, Otto H. Kahn, William P. Dixon, Robert Y. Hobden and Guy E. Tripp as a committee of holders of the four per cent. Refunding bonds of Metropolitan Street Railway Company, issued under a mortgage made by said Company, dated March 21, 1902, to Morton Trust Company, as Trustee, and by Guy E. Tripp, Otto H. Kahn, William P. Dixon, Edward H. Ladd, Jr., Alexander J. Hemphill and Edwin S. Marston as a Joint Committee acting for and on behalf of the said five per cent. bond Committee and said four per cent. bond Committee, for the approval of the Commission to a certain plan and agreement for reorganization of the Metropolitan Street Railway Company, dated October 1, 1910, and the issue of securities by a new corporation in accordance with said plan and agreement, and

"Whereas, thereafter the said plan and agreement bearing date October 1, 1910, was modified and such modified plan and agreement, dated November 29, 1911, was presented to the Commission and application made by said Guy E. Tripp and others, constituting said Joint Committee, for leave to substitute the said modified plan and agreement, dated November 29, 1911, in lieu of said original plan dated October 1, 1910, and for an order authorizing the New York Railways Company, said new corporation organized in pursuance of said plan dated November 29, 1911, to issue its stock and bonds to be applied and distributed in accordance with said plan and agreement of November 29, 1911, namely:

\$17,500,000 per value of stock,

\$16,768,100 face value of its Thirty-Year First Real Estate and Refunding Mortgage Four Per Cent. Gold Bonds, and

\$31,933,400 face value of Thirty-Year Adjustment Mortgage Five Per Cent. Income Gold Bonds, and

"Whereas, the said new corporation has been duly formed and created under the name of the New York Railways Company under the Laws of the State of New York, and has been allowed to intervene and become a party hereto with the same force and effect as if it had been one of the original petitioners, and

"Whereas, in this proceeding a petition has been presented by said New York Railways Company for the consent of the Commission to the execution and issuance by said Company of two mortgages as follows, to wit:

A first real estate and refunding mortgage dated January 1, 1912, to Guaranty Trust Company of New York, as trustee;

An adjustment mortgage dated January 1, 1912, to Farmers' Loan and Trust Company, as trustee;

and

"Whereas, after hearing and inquiry upon said application herein the Commission has by its order made and filed herein January 24th, 1912, authorized the issue by said New York Railways Company of the said bonds and stock to the amounts aforesaid and has by its order made and filed February 27th, 1912, consented to the issuance and execution by said New York Railways Company of the said mortgages, it is further in this proceeding

"Section 2. Ordered, that the New York Railways Company before declaring or paying any dividend on its shares of stock or interest on its bonds secured by said adjustment mortgage shall expend or set aside each month beginning January 1st, 1912, for maintenance and depreciation during each month a sum at least equal to twenty per cent. of its gross operating revenue for such month, and if this account is not expended for repairs and maintenance within that month, the unexpended portion thereof shall be credited as of the end of that month to the account 'Accrued Amortization of Capital,' in accordance with the provisions of the uniform system of accounts prescribed by this Commission for street and electric railways.

"Section 3. Ordered, that this order take effect on the 27th day of February, 1912, and continue in force until otherwise ordered by the Commission and that within ten days after service upon it of a copy of this order, said Company notify the Commission whether the terms of this order are accepted and will be obeyed."

In connection with its decision in this case the Commission also made an Order relative to its Order of February 3, 1912, as the amortization and reserve account of The Third Avenue Railway Company. The Opinion\* adopted and Order entered by the Commission on that date will be found on page 51 of this volume. In so far as the Order of February 3, 1912, was contrary to the decision reached in the Opinion adopted in pursuance of the rehearing as to the New York Railways Company, the Order of February 3, 1912, was modified, by an Order providing as follows:

"The Commission having made and filed in this proceeding among other orders a certain order dated and filed February 3rd, 1912, requiring The Third Avenue Railway Company to establish and maintain (1) a fund to make up the difference between the value of the property mortgaged in and by its mortgages and the face value of its bonds issued under said mortgages and the par value of stock of said company, and (2) a fund for maintenance, depreciation and renewals accruing on and after January 1st, 1912, and the Commission having thereafter and on February 27th, 1912, made and filed a like order in a certain proceeding then pending before the Commission entitled 'In the Matter of the Plan for Reorganization of the Metropolitan Street Railway Company and the Proposed Issue of Securities in accordance therewith, New York Railways Company, Intervenor,' and the said New York Railways Company as to said order last named having applied for and had a rehearing before the Commission, and the Commission, after consideration of the arguments and briefs of Counsel for the New York Railways Company therein being of opinion that said orders are in part unwarranted by law and should be changed, it is

"Ordered, that said order of the Commission made and filed herein February 3rd, 1912, be, and the same hereby is changed to read as follows, to wit:

"Section 1. Whereas, an application, dated and verified December 2nd, 1909, was made to the Public Service Commission for the First District by James M. Wallace, and others, composing a bondholders' committee of bonds issued under the first consolidated mortgage of The Third Avenue Railroad Company, dated May 15th, 1900, for the approval of the Commission to a certain plan and agreement for reorganization of The Third Avenue Railroad Company, bearing date December 2nd, 1909, which plan and agreement contemplated, among other things, the formation of a new company and the issue by it of new securities, as follows:

\$15,790,000 face value first refunding mortgage fifty-year four per cent. gold bonds, dated January 1st, 1910;

\$22,536,000 face value adjustment mortgage fifty-year five per cent. income gold bonds, dated January 1st, 1910;

\$16,590,000 face value of stock; and

"Whereas, the said new company was thereafter duly formed and created under the laws of the State of New York under the name of The Third

\*Printed in Commission Leaflet No. 3, page 29.

Avenue Railway Company and was allowed to intervene and to become a party hereto, with the same force and effect as if it had been one of the petitioners; and

"Whereas, in this proceeding an application has been made by said Third Avenue Railway Company for the consent of the Commission to the execution and issuance by said Company of two mortgages as follows, to wit:

A First Refunding Mortgage to the Central Trust Company of New York, as Trustee, dated December 20th, 1911,

An Adjustment Income Mortgage to United States Mortgage and Trust Company, as Trustee, dated December 20th, 1911,  
and

"Whereas, after hearing and inquiry upon said applications herein the Commission has, by its order, made and filed herein January 17th, 1912, authorized the issue by said Third Avenue Railway Company of the said bonds and stocks to the amounts aforesaid, and has, by its order of even date herewith, consented to the issuance and execution by said Third Avenue Railway Company of the said mortgages:

"Section 2. It is Ordered, That The Third Avenue Railway Company, before paying interest on its bonds secured by said adjustment income mortgage or paying dividends on its shares of stock, shall expend or set aside for maintenance, depreciation and renewals during each and every fiscal year during the term of forty-eight years from January 1st, 1912, a sum equal to twenty per cent. of its gross operating revenue for that particular year, and if this amount is not expended for said purposes during any one year, then at the end of such year the unexpended portion thereof shall be credited to a separate depreciation fund. The whole or any portion of the amount accumulated in such fund may be used from time to time for maintenance, repairs, replacements and renewals in addition to the annual expenditures for such purposes required in said mortgages. The fixing of said amount herein as the minimum amount to be expended or set aside annually for maintenance, depreciation and renewals shall not be held or considered as lessening or limiting in any way the Company's obligation to expend whatever sum or sums may be necessary to be expended for such purposes in order to keep the railway and its appurtenances in thorough repair, working order and condition in every respect and at all times, with all needful renewals and replacements, as provided in said mortgages.

"Section 3. It is Ordered, That this order take effect on the 3rd day of February, 1912, and continue in force until otherwise ordered by the Commission, and that within ten days after service upon it of a copy of this order said Company notify the Commission whether the terms of this order are accepted and will be obeyed."

The further facts as to the present proceeding appear in the Opinion adopted.

*O. C. Semple*, for the Commission.

*James L. Quackenbush, Alfred Ely, Richard Reid Rogers*  
and *William M. Coleman*, for the New York Railways Company.



*Theodore Prince*, for L. M. Prince & Company, interested in the securities affected.

*By the Commission:* The New York Railways Company has made application for a rehearing as to provisions in one of the orders of the Commission made in this proceeding. At the time these orders were made the amendment of the Public Service Commissions Law by Chapter 289 of the Laws of 1912 had not been passed, and in this opinion the matters will be considered as if that amendment had not been made.

There was prior to that act nothing in the statutes which required the Public Service Commission to approve a plan of reorganization or that it should be submitted to the Commission, but incidental to every plan or agreement of reorganization there may be many things which require the approval of the Commission, for example, the issue of stock or bonds, the consent to new mortgages, the transfer of property or franchises, the acquisition of stocks or bonds of other railroads, the assignment of leases or operating agreements and possible modifications of the same. Accordingly, when an application for the approval of a plan or agreement for reorganization was presented to the Commission, it was considered that the petition brought before the Commission for its action such things included in the plan as are required to be or which may be submitted to the Commission for its determination or approval, and it must therefore be assumed that when applicants present such a plan and agreement and ask the approval of the Commission to the same they intend thereby to submit to the Commission for its approval everything involved in the plan and agreement as to which on the proof before it the Commission is given by the law any jurisdiction.

In the present case, therefore, the Commission upon the application for approval of the plan and agreement for the reorganization of the Metropolitan Street Railway Company, after consideration of the proofs presented, issued three separate orders, as follows:

On January 24, 1912, an order in conformity with the decision of the Court of Appeals in The Third Avenue Rail-

road case (203 N. Y. 299), authorizing an issue by the New York Railways Company of stock and bonds as follows:

- \$17,500,000 par value of stock,
- \$16,768,100 face value of thirty year first real estate and refunding mortgage four per cent. gold bonds, dated as of January 1, 1912,
- \$31,933,400 face value of thirty year adjustment mortgage five per cent. income gold bonds, dated as of January 1, 1912.

On February 27, 1912, an order consenting to the issuance and execution of two mortgages as follows:

A first real estate and refunding mortgage, dated January 1, 1912, to Guaranty Trust Company of New York, as Trustee.

An adjustment mortgage, dated January 1, 1912, to Farmers' Loan and Trust Company, as Trustee.

On February 27, 1912, an order requiring:

(1) That, for the purpose of making up the difference between the value of the property mortgaged in and by said mortgages and the face value of the bonds to be issued under said mortgages and the par value of the stock of said company, the New York Railways Company establish and maintain an amortization fund, and before paying interest on its adjustment mortgage bonds or dividends on its stock the company pay in cash into said fund out of the income of the company in each calendar year, beginning with the year 1912, not less than \$108,000, plus four per cent. upon all prior payments into said fund, until the fund shall amount to \$16,500,000, the fund to be used only for the purchase and retirement of mortgage bonds of the company or for acquisition of property for capital or investment purposes.

(2) That the New York Railways Company, before declaring or paying any dividend on its stock or interest on its bonds secured by the adjustment mortgage, expend or set aside each month, beginning January 1, 1912, for maintenance and depreciation during each month a sum at least equal to twenty per cent. of its gross operating revenue for

such month, and, if not expended for repairs and maintenance within that month, that the unexpended portion be credited as of the end of that month to "Accrued Amortization of Capital," in accordance with the uniform system of accounts prescribed for street and electric railways.

In its application for rehearing the New York Railways Company objects only to the order last named, contending, among other things, that the Commission is not authorized by statute to make any such requirements in the case of a company formed upon reorganization under Sections 9 and 10 of the Stock Corporation Law. The question, therefore, is whether the Commission has authority to make any such requirements in this proceeding, if justified by the evidence.

In so far as the application for rehearing is stated to be based upon the ground that no notice that any such thing as the establishment of an amortization or depreciation fund was to be considered in this case and that no opportunity to offer evidence as to the said matters or to be heard thereon was given, it is to be noted that the Commission upon the rehearing opened up the entire case so far as these matters were concerned to the New York Railways Company, and the Company was heard and given full opportunity to present such further evidence or argument thereon as it might see fit.

The courts have many times held that operating expenses should be borne out of income and that depreciation, interest and discount should be borne out of income in like manner as operating expenses.

*People ex rel. Jamaica W. S. Co. v. Tax Comrs.*, 196 N. Y. 39.

*People ex rel. Manhattan Co. v. Same*, 203 N. Y. 231, 237.

*People ex rel. Joline v. Same*, N. Y. Law Journal, Nov. 27, 1912.

The Public Service Commissions Law has recognized this principle and has authorized the Commission to prescribe a system of accounts for street railroad corporations and the manner in which such accounts are to be kept, and to prescribe the form of accounts and records to be kept as to

receipts and expenditures of moneys, and it has also authorized the Commission after a hearing to prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited (Public Service Commissions Law, Section 52). It may well be that after a receipt or an expenditure has been so credited or charged there will be less money shown on the books as surplus applicable to the payment of dividends and that fewer dividends out of capital will thereafter be paid.

With reference to the power of the Commission under the statute there are now two questions: First: As to the power of the Commission to require the establishment of an amortization fund to make up the difference between the value of the company's property and the face of its securities; Second: As to the power of the Commission to require the company to provide for constant accruing depreciation out of revenues from its operations.

#### AMORTIZATION FUND.

It appears upon consideration of the provisions of Section 9 and 10 of the Stock Corporation Law and of the decision in the case of *People ex rel. Third Avenue Railway Company and others v. Public Service Commission for the First District* (203 N. Y. 299) that the Commission has power to determine whether the proposed stock and bonds are to be issued under and in conformity with the provisions of the statute, whether the new corporation has been duly organized and become vested with the title to the property and franchises of the old corporation and whether the plan of reorganization is being carried out, and also whether the total par value of the new securities exceeds the total par value of securities of the company to whose property and franchises it has succeeded, and any new money contributed. It would seem that the character and the amount of the securities to be issued are such as may be agreed upon by the purchaser at the foreclosure sale and the creditors to whom by his plan he shall give recognition, provided only the aggregate is not greater than the amount of the securities of the former company, plus any cash put in. The securities

as to face amounts are authorized entirely without regard to the property acquired by the company, and are to be issued under the authority of the statute and not so far as their amount or character is concerned under any real control of or dependence upon the Public Service Commission. It would seem, therefore, after careful consideration of the whole question, and particularly the brief of Counsel for the applicants, that, notwithstanding a finding by the Commission that the face of the securities exceeds the value of the property by as much as \$16,500,000, and that the securities are, therefore, issued at a discount of that amount, the Commission was without authority to require the deficiency to be made up or amortized. In the opinion of the Commission the company ought to provide an amortization fund for this purpose, but the power conferred by the Public Service Commissions Law is not broad enough to authorize the Commission to issue an order requiring the company to do so. The Order of the Commission is, therefore, to that extent unwarranted and should be changed.

#### DEPRECIATION FUND.

Upon further consideration of the provisions of the order requiring the establishment of a reserve fund to provide for maintenance, repairs, renewals, depreciation, etc., the Commission considers that the Order is within the power of the Commission and is fully justified by the evidence in the case. The matter has been discussed in the opinion of the Commission filed at the time of the making of the orders and the authorities seem fully to sustain the requirement.

*People ex rel. Jamaica W. S. Co. v. Comrs.*, 196 N. Y. 39.

*People ex rel. Manhattan Co. v. Comrs.*, 203, N. Y. 231, 237.

*People ex rel. Joline v. Comrs.*, N. Y. Law Journal, Nov. 27, 1912.

An Order, therefore, will be made upon this rehearing eliminating from the Order made under date of February 27, 1912, so much thereof as requires the establishment and maintenance of an amortization fund to make up the difference in the value of the property acquired by the company and the face value of the securities issued by the company in return therefor.

## WISCONSIN.

### Railroad Commission.

#### CITY OF MILWAUKEE *vs.* THE MILWAUKEE ELECTRIC RAILWAY AND LIGHT COMPANY.

*Decided August 23, 1912.*

**Unreasonable Rates—Effect of Ordinance Provision—Valuation of Property—Apportionment—Cost of Reproduction—Cost of Plant and Business—Capitalized Value—Earning Value—Tax Value—Capitalization of Patent Rights—Paving—Overhead Allowance—Cost Method and Comparative Plant Method of Computing Going Value—Bond Discount—Working Capital—Rate of Return—Value of the Service—Customary Charge—Single Fare Limits—Zone System.\***

[*Note:* Because of its great length, the opinion in this case is not printed in this Leaflet. The following syllabus, prepared by the Commission, is sufficient to indicate the scope of the decision.—Ed.]

Complaint was made by the city of Milwaukee that the rates of fare charged by the T. M. E. R. & L. Co. are unreasonable. The complaint as originally filed also involved adequacy of service. A decision in the matter of service was rendered July 1st, 1907, 1 W. R. C. R. 662, and the matter of reasonableness of fares was reserved for subsequent hearings. A second complaint filed by the city on May 13th, 1908, related entirely to reasonableness of rates of fare. It alleged in substance that the charge of 5 cts. for a single cash fare, 6 tickets for 25 cts., or twenty-five tickets for \$1, with the privilege of one transfer within the city limits, is unreasonable. The petitioner prayed that a 3-ct. fare be established. Respondent denied that the rates of fare are unreasonable and alleged that the laws and ordinance constituting the franchises are such that any order requiring the respondent to charge lower rates would constitute impairment of the obligation of contracts, deprive the respondent of property without due process of law, deny the equal protection of the laws, and therefore be unconstitutional and void, violating particularly art. 1, sec. 10, and art. 14, sec. 1 of the Federal Constitution. Several other complaints against the respondent and its constituent company, the M. L. H. & T. Co., involving reasonableness of rates and service for Waukesha, West Allis, Wauwatosa, and the village of East Milwaukee, were held in abeyance and decided on the basis of the findings in the complaint of the

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\*Editor's digest.

city of Milwaukee. The ownership of the properties of the T. M. E. R. & L. Co. and the M. L. H. & T. Co. is practically identical. Both the city and the interurban systems are operated by the same management, and both companies are credited with earnings and charged with expenses arising from urban, suburban, and interurban business. A valuation of the property was made and the revenues and expenditures were investigated. An apportionment of the entire properties was made among the electric lighting, power, heating, and railway businesses. An apportionment for the railway was made as between the T. M. E. R. & L. Co. and the M. L. H. & T. Co., and a further apportionment as between the different classes of service and the different systems involved.

Some issue was raised as to whether the city ordinance, granting an extension of franchise to 1934 and providing a rate of charge of six tickets for a quarter or twenty-five tickets for a dollar, is not a contract between the city and company which cannot be violated, altered, or amended without the consent of both parties. This issue is, however, not pressing in view of the decisions of our supreme court that the provisions of such ordinances relating to limitations of rate of fare are subject to the determination as to reasonableness by the Railroad Commission as provided by ch. 362, Laws of 1905. (*Manitowoc v. Manitowoc & N. Tr. Co.* 1911, 145 Wis. 13; 129 N. W. 925.)

The value of the property used and useful for street railway purposes in Milwaukee upon which the company is entitled to a fair return, is the most important single factor affecting the determination of whether the company's present rate of fare is unreasonable and excessive. A valuation for the T. M. E. R. & L. Co. as of Jan. 1, 1910, showed that the cost of reproduction new of the physical property aggregated about \$9,942,125 and the total value of the plant and its business, about \$10,300,000. This sum would not seem to be far away from the amount upon which the respondent is entitled to reasonable returns. Certain adjustments for the period subsequent to 1910 brought the cost of reproduction new, at Jan. 1, 1911, up to \$10,514,201 and the total value of the plant and its business up to \$10,900,889. In connection with the case of *Cusick et al. v. T. M. E. R. & L. Co. et al.* 1912, 11 W. R. C. R. 314, a valuation was made for the M. L. H. & T. Co. The appraisal of Jan. 1, 1910, showed a cost of reproduction new, inclusive of materials and supplies, of \$6,133,033, and it would seem that the cost value of this plant and its business cannot greatly exceed this value.

The value of a plant and its business that is ultimately found to be fair and equitable under the circumstances, may not agree either with the original cost or with the cost of reproduction, but in most instances it is likely to be found at some figure in the neighborhood of these costs. Operators in public utilities who fail to use ordinary business judgment either in the location, construction or management of the same, or who incur unnecessary and excessive obligations

in other ways, should not be permitted to shift such extra costs upon the public. It is, in fact, to prevent such shifting and other unfair practices of this kind, which are possible under monopolistic conditions, that public utilities have been placed under government regulation.

In the present case, capitalized value was suggested by the respondent as a probable test of the value of the property. It is well known from experience that public utilities are mostly overcapitalized, and that the par value of their outstanding securities usually exceeds the actual investment in the property that is used and useful in connection with the services they render to the public. In fact, the bonds alone often amount to more than the cost-value of this property. The reasons for this are easily explained. They are found in the fact that in capitalizing the plants, whether for purposes of consolidation or otherwise, securities are often issued not only against actual and other costs, but against estimated monopoly profits, future increases in the business, estimated savings in expenses and many other elements of this nature. Not only this, but investigators of such matters feel that the greater proportions of the consolidation of business interests during the past three decades have had their sources in the opportunities for private gains that were offered to insiders in connection therewith, through unlimited security issues and the rigging of the markets by which these securities were unloaded upon the public at prices that netted such insiders large profits. In the public utility field, where monopolistic conditions largely obtain, the opportunities for such practices have been relatively large. That security issues, based on such conditions, cannot often fairly measure either actual investments in, or fair value of, the property they represent, is rather obvious. It is equally clear that excessive capital issues of this sort cannot ordinarily constitute a fair and equitable basis for the valuation upon which the rates charged for the services rendered to the public should be fixed.

Since the earning value of a plant and the rates the plant charges for the services it renders depend upon each other, it is clear that the earnings cannot be a fair or equitable basis for any valuation upon which rates must be based.

The appraised value for purposes of taxation may similarly lead to erroneous conclusions when used as a basis for rate making. Such values are frequently based upon net earnings or the ability of the company to carry a portion of the general burden of taxation and involve a capitalization of net profits even though such profits arise from excessive rates.

The respondent also claimed a certain amount of value for certain patent rights. Such rights may, undoubtedly, have values; but it would hardly seem that such values can properly be considered as permanent capital charges. Rights of this kind are, as a rule, secured because they are profitable or because, in one way or another, they tend to increase the net earnings. The prices paid for such rights would seem to be operating expenses rather than capital charges.



If regarded as capital charges at all, they should be written off during the life of these rights from the profits for which they are responsible. In the present case the facts presented in relation to these rights are rather indefinite and it is difficult to say just how much importance, if any, should be given to them in the appraisal.

The company contended that the entire cost of pavement laid above conduit and track should be included in the valuation upon the basis of cost of reproduction new, irrespective of whether such paving has been laid by the city or by the company. Heretofore, in cases before the Commission, only the actual paving laid by the company has been included in the value for rate-making purposes and we see no reason for departure from that rule in the present case. "Every legitimate expenditure in adapting the utility to the demands of progress and community growth is a proper charge to construction and as such the investment therefor is entitled to participate in the distribution of the earnings from operation. Obviously expenditures for payment incurred by the utility in response to assessments levied therefor by the city, or the cost of cutting through such pavement for construction purposes and its replacement, are proper capital charges. It does not necessarily follow that the utility is to capitalize expenses for municipal betterment in which it has not participated and where such accruing benefits to the utility are remote and incidental, and thus compel the subscribers for utility service to pay increased rates because of public improvements. The improvement is not a proper element of value where the pavement has not been paid for by the utility, nor any expense in connection with it directly incurred, in determining a value which shall serve as the basis for an adjustment in rates." (*City of Ripon v. Ripon Lt. & W. Co.* 1910, 5 W. R. C. R. 1, 10.)

Apart from the expense of labor and material incurred in constructing the plant, many additional costs must be met which do not appear in the appraiser's inventory of tangible property. Among these are the expenses of organization preliminary to the construction of the property, usually consisting of engineering and legal expenses; the expenses of supervising, including the wages of all contractors, superintendence and necessary administrative organization; contingent costs due to loss in time and material, and unexpected obstacles occurring during the progress of construction; and, finally, the expense of financing the construction, consisting principally of interest on money advanced prior to operation. Allowances for such expenditures are usually made in appraisals of public utility properties and have in all instances been made by this Commission. The amount for such a percentage allowance has frequently been made a matter of dispute and is a controverted point in the present case. In previous decisions as to the appraised value of property involved in cases relating to compensation at time of purchase, valuation for stocks and bonds and for reasonable rates, the addition has not exceeded 12% of the priced inventory. (*Hill et al. v. Antigo W. Co.* 1909, 3 W. R. C. R. 623, 685; *State Journal Prtg. Co. v. Madison*

*G. & El. Co.* 1910, 4 W. R. C. R. 501, 540; *In re Fond du Lac W. Co.* 1910, 5 W. R. C. R. 482, 500.) In general, this percentage consists of four items: 4% for engineering and superintendence; 2% for organization and legal expenses; 3% for interest during construction; and 3% for contingencies. Under the conditions in the present case, 3% is a sufficient allowance to add to the cost of physical property to cover contingencies. As regards the allowance for interest, 3% is not unreasonable in the light of the allowance for working capital and of the fact that construction has been piecemeal and has frequently been placed in operation during the year of construction. No serious question is raised as to the allowance of 4% to cover engineering and superintendence, and the allowance of 2% to cover organization and legal expenses. In examination of the book-figures these additions appear to be ample. The objection that the Commission's allowance of 12% excluded contractor's or organizer's profits, working capital, discount on bonds, etc. is not valid in view of the fact that these items are included in the unit prices employed by the Commission or otherwise provided for in the valuation made by the Commission.

It is conceded that in addition to the value of the tangible property some allowance is properly made for the cost of building up the business, or the losses sustained before the property has been placed upon a paying basis. Previous decisions of this Commission have recognized the necessity of compensating for such early losses and the existence of a going value is recognized by both parties to the complaint in the present case. The cost-value of the business alone is usually determined from the original cost of the business, as well as from the cost of reproducing it. In the present case, however, its normal original cost is hidden in the rather obscure figures which relate to the value of the plants in 1891; to the additions to the property from that year up to 1897; and to the earnings and the operating expenses during this period. Some idea of the cost of building up the business may be had when depreciation and interest are allowed on the present value of the property plus something for contingencies, and plus further, from year to year, the annual proportion of the estimated cost of the new additions from 1891 up to 1897, and when the net earnings which have thus been found to be required for depreciation and interest are compared with the actual net earnings of the company during this period.

Two methods are proposed for the measurement of going value in the present case. One of these is a continuation of the cost or investment theory of value and is based upon the actual losses sustained by the utility in the past, and its subsequent earnings as an offset to such losses. Under the cost method the going value of the enterprise is properly the difference between gross earnings and operating expenses plus depreciation and interest upon the investment. In determining what expenditures listed as operating are to be included, the distinction as to what are revenue and what are depreciation and capital expenditures should be carefully main-

tained. A question of equal importance is whether expenditures have been wisely and necessarily incurred. The cost basis of estimating going value has been variously criticised, by many upon the ground that its estimates are too liberal, by others that it results in negative values and takes recognition of the utility's past financial history. Its obvious merit lies in the fact that it assumes that the relations of users and utility have at all times been placed upon an equitable basis. The comparative plant method of estimating going value is a continuation of the appraisal or cost of reproduction theory of value and is based upon the assumption that an identical utility property shall have been reproduced at the present time, and estimates the expenditures probably made before the hypothetical or comparative plant shall have been placed upon an earning basis identical with the present property. The comparative plant basis is open to the objection that it is based upon a large number of varying assumptions, involving practically every factor in the calculation. Its greatest point of weakness is the assumption made with regard to earning power. It is not certain the gross earnings will show a uniform increase year by year. We are not warranted in assuming that rates will remain the same or that the company will increase its net earnings until they yield present revenues. In fact, in a determination of whether present earning power is equitable, no portion of the rate should be based upon present earning power as a factor. There is no reason for assuming, however, that gross earnings will not continue to increase when present earnings have been reached and continue to offset the earlier losses.

Aside from an arbitrary percentage which must have some basis in fact, the measure of going value must be made either upon the basis of cost or upon the basis of an estimate of a reproductive value. Upon the basis of cost, instances frequently occur where past surpluses have offset and wiped out past losses. Upon the basis of a reproduced plant a going value will be developed in every case dependent largely upon the liberality of the estimate. In the present case, no going value is developed upon the "losses and deficits" or net cost value basis as followed in previous decisions of the Commission, as the company has had opportunity to recoup itself for those allowances for losses which the circuit court included as elements of added value in 1897. On the other hand, when the estimates for the obscure financial transactions in the period from 1891 to 1897 are considered, and an allowance is made on the comparative plant basis, a going value aggregating about \$450,000 may be said to represent the maximum amount which in the light of the company's past financial condition may properly be permanently placed as a part of the value of the property used and useful for rate-making purposes.

It has been claimed by the company that expenditures necessary to the organization and financing of the property are properly a part of the investment and must be so considered, and attention is called particularly to the excluded items of bond discount. It is urged

by the city in its brief that the discount or premium is virtually a part of the interest to be paid on the bonds and that the value of the investment for rate-fixing purposes should be limited to the value of the property devoted to the public use without regard to the sources from which the money to develop the property was derived. Respondent claimed discount on bonds should be considered as part of the company's investment and laid stress upon the necessity of a bond discount in issuing securities. Respondent further claimed that any law or regulation which would make it impossible to pay a bond discount and compensate for carrying an enterprise through the doubtful years would make it impossible to float new enterprises. Under certain circumstances a discount on bonds should undoubtedly be included as a portion of the intangible value of the property. An examination of the amounts realized from the sale of securities by the company in the present case, however, discloses instances of sale at a premium as well as sale at a discount. Whether or not the discount rate is to be included as a portion of the property account will depend upon the interest rate allowed the utility. It is obvious that a 4% bond cannot be expected to sell at the same premium as a 6% security, and the amount of the interest rate allowed the utility must determine whether or not the discount is to be included. In the present case it appears that the allowance for interest and profit is ample to allow for all expenses of the sales and discount upon the securities issued.

It is conceded that the respondent company is entitled to an allowance for working capital in order to economically carry on its business. The only question in dispute is the amount of such an allowance. It is apparent that such an amount is dependent largely upon the nature of the business. The electric railway is unlike the water, gas, and telephone utility in that it has no monthly bills but receives a large portion of its transportation revenues daily. The electric railway also has the advantage of selling a part of its transportation service in advance in the form of blocks of tickets or mileage books. The money as received is at the company's disposal as working capital prior to the time when it is necessary for current expenses. In the present case, an amount was allowed for stores and supplies on hand, which item includes material necessary for a reasonable amount of new additions. A further allowance was made to cover other additional working capital for operation and construction purposes.

The determination of what is a proper rate of return upon the reasonable value of the property is dependent largely upon local conditions which surround the plant and may be expected to vary with each particular case. The courts hold, in substance, that the investor is entitled to a reasonable return or reward for his enterprise, his risk and the devotion of his capital to the service of the public. The return or profit under this definition appears to include interest, or the share of the investor, as well as profits, or the share of the entrepreneur. The interest proper should include only the

amount that is paid for the use of the capital employed. The profits consist of the wages of management, broadly interpreted, of compensation for the risks and responsibilities that must be borne by the employers, and of such other compensation, if any, as may be demanded by the conditions. Each of these elements, in the long run, must be high enough to attract capital and business ability into such utility enterprises, and it is the duty of the Commission, in passing upon matters in which interest and profits are involved, to determine in each particular case how much is to be allowed for each of these elements. (*Hill et al. v. Antigo W. Co.* 1909, 3 W. R. C. R. 623, 751, 764.) In the present case, an allowance for interest of from 5 per cent. to 6 per cent. cannot be said to be unreasonably low to compensate for the cost of securing capital. Such amount is considerably above the figure at which bonds have been disposed of in the past and will care for such discount as it has been necessary to give to make the securities saleable. If to this is added an allowance of from 1½ per cent. to 2 per cent. to cover profits, the total rate of return is sufficient to cover such risks as are evidently inherent in the business and for which the owners are entitled to compensation.

The contention was made that, in determining reasonable rates, the value of the service to the users should be considered aside from the determination of what is a reasonable return upon the investment. It was further urged that the 5 ct. fare is the customary fare and that the present commutation rate of six tickets for 25 cts. and twenty-five tickets for \$1 is unusually low. Definite conclusions as to what constitutes the customary charge or the value of the service, when based upon generalized data of the character presented in the present case, are always difficult. Comparisons are likely to be misleading unless they are accompanied by a careful consideration of conditions and facts in each particular case. Service and fares in the traction business are dependent upon the size of the community, the area served, the track mileage, the density of traffic, and other factors. Sufficient variation is shown to justify the conclusion that operating conditions in Milwaukee are sufficiently dissimilar to require a more detailed examination into the reasonableness of the rate of fare than could be afforded by a mere comparison of what is the customary or usual charge.

The question of a paying haul and the extension of single fare limits was considered by the Commission. The actual and paying haul per revenue passenger and per car were investigated. A division was made between movement and terminal costs, or the costs affected by the length of haul per passenger and the costs for each passenger irrespective of his haul. It was found that an average increased haul is possible for a single fare under the reduced ticket rate prescribed by the Commission. The adjustment of the different hauls was considered in relation to the entire system. In a measure the entire city traction system is a single unit and it cannot be said that each line must be self-sustaining. Where new extensions

are made or new lines built these cannot be expected to pay as well during the first years as the older and more traveled routes, and where single deficits occur, other lines must show compensating surpluses. It is desirable to know, however, in any careful study of traffic conditions, the comparative distance it is profitable to haul a car or carry a passenger. Frequently routes are too long and extend into territory which cannot reasonably be expected to grow and become self-sustaining. The elimination of surplus transportation facilities where such facilities are not needed is of as great an interest to the public as it is to the company's management.

Concerning the question of zone system rates, the conclusion has been reached that, for a city and its suburbs which does not cover a greater area than Milwaukee and in which the population and industries are distributed as in this city, the best system of rates, for the present at least, is probably a system under which there is but one fare zone for an area varying from about four to five miles from the business center of the city, and under which only one fare, based on the average cost, is charged within this zone. On the whole such a system would seem to meet the present needs of the city somewhat more fully than is likely to be the case for a system made up of a single restricted  $3\frac{1}{2}$  mile central zone and outlying one mile zones. It is questionable also whether it is desirable or necessary to place the single fare points in a symmetrical manner around the center of town. The analysis of cost by lines indicates, for example, that the traffic conditions are such as to permit extensions to the north and west and still maintain a paying haul, which are somewhat beyond extensions which would pay toward the south and southwest. It appears to be more equitable to apply the rule of cost to single areas and lines, with such limitations and qualifications as local circumstances and the need for interrelation of service dictate, rather than to endeavor to merge and equalize the claims of all communities situated at a stated distance from the center of the city.

In the matter of reasonableness of rates, the Commission has always held that public utilities, for adequate service and under normal conditions, are ordinarily entitled to rates that will cover reasonable amounts for operating expenses, including depreciation, and interest and profit on a fair valuation of the property used and useful in serving the public. In the present case, the surplus available for return upon investment shows that a reduction in rates is possible. In determining this reduction the Commission considered the additional expenses contingent upon the claims of employees for standard wages, the claims of the city for fulfillment of franchise and other regulative restrictions, claims of suburban patrons for extension of service and the constantly recurring need for service betterment. Under all the circumstances in the present case, a reduction of fares has only been made possible in the last year of operation. The rates of fare should be readjusted and the extensions of the single fare limits as provided in the orders relating to

West Allis, Wauwatosa, and to East Milwaukee should be made. The Milwaukee El. Ry. & Lt. Co. is ordered to discontinue the present ticket rate of twenty-five for \$1 and to sell through its conductors tickets in packages of thirteen for 50 cts., and each ticket is to entitle the bearer to one continuous passage in the same general direction, with privilege of usual transfers between the single fare points upon the city lines of the respondent. Thirty days is deemed sufficient time to comply with the above order.

The question of the improvements in the service will be fully dealt with in a separate report.

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IN RE INVESTIGATION ON MOTION OF THE COMMISSION OF THE  
RULES, REGULATIONS AND PRACTICES OF THE CHIPPEWA  
VALLEY RAILWAY, LIGHT AND POWER COMPANY IN FORCE  
IN THE CITY OF EAU CLAIRE.

*Decided November 11, 1912.*

**Discrimination in Rates—Concessions to Consumers—  
Installation of Meters.**

Upon complaints of discrimination in the electric rates of the Chippewa Valley Railway Light and Power Company in force in the City of Eau Claire, the Commission instituted an investigation with respect, among other things, to (1) certain discriminations alleged to exist in favor of consumers using only electricity for lighting purposes; (2) a complaint that the company had the option of charging its flat rates where it chose; (3) a rule under which a refund was granted to new customers using only electricity for power for a period of three years.

The respondent thereafter submitted an amended schedule designed to eliminate the objectionable features and the Commission took the amendments under consideration.

1. Objection having been made to the existing method of estimating the active connected load for residence lighting, the respondent proposed a new method of computation with the proviso that where all rooms were wired and connected, the consumer might at his option elect to use the classification of the existing rate, under which those consumers who used electricity exclusively were favored. The Commission held that all consumers of a class should be governed by the same rate. If the proposed amendment were accepted this would not be accomplished, inasmuch as residence consumers would be arbitrarily divided into two classes depending upon whether all their rooms were wired and connected.

With respect to a similar situation in the rates for business incandescent lighting, the Commission held that the amendment proposed in this regard tended to compel consumers who wished electricity for display lighting to use it for interior lighting as well and was therefore discriminatory and unjustifiable.

## INVESTIGATION OF CHIPPEWA VALLEY RY. L. & P. CO. 207

With respect to the amendment proposed to the business arc lighting rate, by which the privilege of free wiring which had been enjoyed by consumers using electricity exclusively was withdrawn, the Commission held that in an adjustment seeking to eliminate discrimination all consumers can not be benefited and some may even be obliged to give up privileges. In this case the privilege given up, free wiring, was not such as the utility can ordinarily be expected to extend.

2. The Commission found that there was no ground for the complaint that the company had the option to charge its flat rates and held that the rule providing that the company might install meters at its option, but should not be required, at its own expense, to install meters for any consumer using less than five 50 watt units, was not unreasonable, inasmuch as it is hardly profitable to install a meter for a consumer who has only four 50 watt units or less connected.

3. The company's introductory power rate provided that all consumers using the company's wholesale power rate and purchasing their electrical equipment from the company or from others at a price not exceeding that for which the company would furnish the same, and who shall use electric power purchased exclusively from the company for a period of three years, shall be entitled to a refund of 25 per cent. of the cost of the electrical equipment to be refunded monthly by deductions from the monthly bill. The Commission held that a utility is entitled to develop its business as far as possible, but the cost of any concession offered to manufacturers as an inducement to use power must not be so charged that it can or will be made the basis for an increase in rates to other customers; and further that such concessions must not result in unjust discrimination between those engaged in competitive and other enterprises. If the electric company can manufacture and sell current for power at the rate quoted without endangering its financial stability or impairing its service, no reason appears why it should not be permitted to do so. If the gas company cannot meet this competition without impairing its service or financial stability, it will have to leave the field and confine its attention to those branches of service in which it is the most efficient.

*Ordered*, That the respondent amend its present schedule of rates for electric light and power and place in effect, as a substitute therefor, either of two schedules proposed by the Commission or both, giving consumers, in the latter case, the option of choosing between the schedules. Minimum and maximum rates were fixed by the proposed schedules.\*

### OPINION AND ORDER.

Notice of complaint of discrimination in the electric rates of the Chippewa Valley Railway, Light and Power Co. in force in the city of Eau Claire, was brought to the attention of the Commission on several occasions by its inspectors

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\*Editor's headnote.



and under date of April 26, 1912, the Eau Claire Gas Light Company submitted a written complaint also alleging certain discriminations.

The complaints against the rates and rules of this utility are essentially as follows:

1. That there is a difference in the rate through the method of classifying the active lamps, as a basis for the readiness-to-serve charge, for consumers using only electricity for light and those using some other method in addition.

2. That the Company may charge its flat rates at its option.

3. That as an introductory rate a refund is granted to consumers using only electricity for power for a period of three years.

4. That for small miscellaneous motors the rate is arbitrary and not based on the use in case the consumer does not use current exclusively for light; whereas a different rate based on current consumed is granted in case the premises are lighted exclusively by electric current.

5. That all consumers using 5 H. P. or more may be charged either flat rate or meter rate at the option of the company.

6. That the classification of lamps into active and non-active for hotels, clubs and boarding houses, is arbitrary and unjust and the same as for residences.

7. That the classification for auditoriums, dance-halls, opera-houses, lodge-rooms, churches, warehouses, warerooms and wholesale and jobber's houses, and manufacturing plants is arbitrary, and based on whether consumer uses electricity exclusively or not.

On May 14 the respondent submitted an amendment to its schedule designed to eliminate the objectionable features which were the subject of complaint.

The present rate for residences provides for a readiness-to-serve charge of 15 cents for each active connected incandescent unit of 50 watts capacity, and then classifies the lights into active and non-active according to the room in which they

are located. It further provides, however, that in case electricity is not used exclusively for lighting when available, all lights shall be deemed active. The proposed amendment provides that active connected load or demand shall consist of 60% of the first 500 watts connected and 33 1/3% of all additional watts connected; or where all rooms are wired and connected, the consumer may at his option elect to use the classification of the present rate.

While this amendment may do away with the discrimination complained of in connection with the residence rate, it is not wholly satisfactory, as it leaves loopholes for other complaints that might result in friction and bad feeling which should by all means be avoided so far as public utilities are concerned. For instance, if a consumer should have only the lower floor of his home lighted by electricity he could not take advantage of the classification open to consumers who have all their rooms wired and connected. Again a consumer may be using gas for fuel and at the same time lighting the kitchen with gas. Such a consumer would also be subject to the one classification. No attempt has been made to determine whether one classification is any more advantageous than the other, but it would seem that all residence consumers should be treated the same and be given the same privileges, unless there is some just basis on which they could be divided into classes, and a rate provided for each class. There does not seem to be enough difference, however, in the present instance, to warrant the establishment of classes such as would exist if the proposed amendment was accepted.

Respondent wishes to retain its present classification but claims that it is so constructed that it can apply only to residences where all rooms are wired and connected, and for that reason does not wish to make it applicable to all consumers. We can not see the logic of this in view of the fact that a classification of lamps into active and non-active is for the purpose of distributing to each consumer the share of the capacity expenses he occasions and as measured by his demand during the station peak. If, as respondent states,

the present residence rate is based on a careful analysis of the demand factor among this class, we see no reason why it can not be made applicable to all consumers regardless of whether they have all their rooms wired and connected or not. Take two consumers, one has his entire house wired, the other only the second floor. Obviously each is going to use the lights on his second floor about the same time and in the same manner. If such is the case the cost of furnishing service to the second floor of each is practically the same. It must be borne in mind, however, that the consumer expenses such as maintenance of meters, reading meters and delivering bills, etc. are covered by the minimum monthly bill. As the non-active lamps are burned during an off peak time it seems that it would be good policy on the part of the utility to encourage their installation not only in places that have active lamps but also in places where very few or no active lamps are used, as for instance in residences where gas is used as the principal source of light, but electricity is desired for convenience lighting, and not to charge the readiness-to-serve rate on such non-active lamps even though they are the only lamps installed. From the foregoing it appears that it would not be unreasonable to require the utility to make its present classification apply to all residence users. Much could be said in favor of such a classification so used, but particularly the fact that in the assessment of the demand charges it shows great flexibility as the percent active varies with each consumer according to his installation. From data compiled in this office we find that the ratio of demand to connected load for residences varies directly with the size of the installation. For installations from 1 to 5 lamps the ratio is 70 per cent., and in installations of 51 and over the ratio is about 35 per cent. The present classification would not only follow the above percentages which represent an average experience but would also vary with deviations from this average.

If, however, the utility does not feel that it wishes to make its present classification applicable to all residence consumers, it would seem that the only thing that can be

done to secure a more perfect adjustment is to adopt some other method of classification. The classification generally followed by the Commission might be used. This method is the result of extensive investigations and tests and has proved satisfactory wherever used. It is simply to establish as active a certain percent of the connected load as is suggested by the utility for consumers who do not have all their rooms wired and connected. The institution of such a system would not be so radical and sweeping as to jeopardize the sales of the company and it would have the advantage of eliminating all possibility of discrimination and complaint.

It seems advisable that all consumers of a class should be governed by the same rate. If the proposed amendment were accepted such, however, would not be the case; as residence consumers would be arbitrarily divided into two classes depending upon whether all their rooms were wired and connected. Furthermore, as the amendment leaves it to the option of one of these classes—i. e., those who have all their rooms wired and connected, which classification they wish to use, it is probable that all those whose bills will be reduced thereby will want to change to the percentage classification. If there is to be a reduction in rates it seems that it should be done in some other than the proposed arbitrary manner.

The present rate for business incandescent lighting contains a discriminatory feature similar to the one in residence lighting in that it permits consumers who use electricity exclusively and who use 10% of their total connected capacity for window display or advertising purposes to class such window or advertising lights as non-active. The amendment submitted on May 14 seeking to correct this provides that, "if any commercial customer shall contract to use, for not less than two thousand hours for each light per year, an additional amount of light not exceeding 100% of his total interior capacity connected and used, for sign, window display or advertising purposes, such percentage of light so used shall be considered non-active." It is evident at once that this amendment tends to compel consumers who wish

to use electricity for display lighting also to use electricity for interior lighting. Not only that, but it compels a consumer to use electricity almost exclusively for interior lighting if he wishes to do very much display lighting as not exceeding 100% of his interior capacity can be used for such purposes. If for instance a merchant was using a private system or gas for interior lighting, but wanted to use electricity for window display and advertising lighting he would have to pay the regular service charge of 15 cents per 50 watt capacity which he would not have to pay if he used electricity exclusively. There is another objection to this amendment, namely, that the percent of the total installation deemed active varies from 50% to 100%. The installation of a commercial consumer who uses no lights for display purposes will be classed as 100 percent active; whereas one who uses one half of his installation for the above named purpose will have his entire connected load classed at 50 per cent. active. There does not seem to be any justification for such a discrimination. In view of the fact that window display and advertising lighting is all the same whether electricity is used for interior lighting or not, it seems that it would not be unreasonable to put it all in the same class. Most of it is off peak and long hour business and could be covered by a flat rate per kw. hour with a certain number of hours per year guaranteed. For business consumers who wish to use window display lighting in connection with their interior lighting, a certain fixed percentage of the installation should be taken as active. The demand of this class of consumers varies a great deal depending upon the nature of the lighting done. It will be found that those who use relatively a great number of lights for display and advertising purposes have a high demand as the lights used for this purpose are practically all active at the time of the peak. On the other hand those who have little or no use for this kind of lighting have comparatively a low demand. The amendment proposed by the utility treats this class as though it was just the opposite. From data on file in this office we find that the average demand of this class is about 70

percent. It would seem that a rate based on his percentage would be more equitable and just than the proposed amendment.

The present rate for business arc lighting provides that the rate for such lighting, "shall be the same as for commercial incandescent lighting, except that to all consumers using electricity exclusively for lighting, when available, the company shall furnish the wiring, lamps, and maintenance of the same at its own expense, and the rate in such case shall be 45 cents per month for each six ampere a.c. arc lamp connected, plus 3 cents per kw. hr. for all current consumed." The amendment of May 14 removes the discrimination in the above by establishing a rate for everybody at 45 cents per arc plus 3 cents per kw. hr. for all current consumed, and the company to furnish the lamps and maintenance of the same at its own expense. It will be noted that under the present rate for consumers who use electricity exclusively, the company also furnishes the wiring free. This is not included in the amendment; consequently it will result in an increase to some consumers; but under the circumstances such an increase is not deemed unreasonable or unjust; as in an adjustment seeking to eliminate discrimination all consumers cannot be benefited, some may even have to give up privileges which they enjoy. In the present case, the privilege given up, free wiring, is not such as ordinarily can be expected that the utility will furnish and for that reason this part of the amendment of May 14 is acceptable.

One of the complaints lodged against respondent is that it may charge its flat rates at its option. There, however, is no foundation for such a complaint. The company's rule under flat rates provides, "that the company shall not be required, at its own expense, to furnish or install meters for any consumer using less than five 50 watt units or the equivalent thereof \* \* \* or the company may, at its own option install a meter for any such consumer." This rule is not deemed to be unreasonable; as it is hardly profitable under ordinary circumstances to install a meter for a consumer who has only four 50 watt units or less connected.

Complaint is also made against the company's introductory power rate which provides that all consumers using company's wholesale power rate, and purchasing their electrical equipment from said company, or others at a price not exceeding that for which said company would furnish the same, and provided such customer shall use electric power purchased exclusively from said company for the operation of his machinery for a period of three years, he shall be entitled to a refund of 25% of the cost of the electrical equipment, refunded monthly and deducted from his monthly bill. The complaint against this rate is to the effect that it tends to monopolize the sale of power by giving a special rate to exclusive users of electrical current. In view of the fact that this period of exclusion is only three years, during part of which time the company is refunding a part of the cost of the electrical equipment installed, we cannot see that it is unreasonable. Surely a consumer cannot expect that 25% of his equipment be furnished free, and that then he be permitted to use some other kind of power at the same time, as that would defeat the purpose of the rate which is to encourage the use of electrical current. After the three year period has expired the consumer can use any other kind of power he chooses. This might result in serious competition for the gas company, but that cannot be helped. Each utility is entitled to develop its business as far as possible. For an electric utility it is important that the sale of power be encouraged as it is through the greatest possible development of its power business that lower rates for its customers can be obtained. It must be borne in mind, however, that the cost of any concession offered as an inducement to manufacturers to use power, cannot be charged so that it can or will be made the basis for increases in rates to other customers; and further that such concessions must not result in unjust discrimination between those engaged in competitive and other enterprises. If the electric company can manufacture and sell current for power at the rate quoted without endangering its financial stability or impairing its service, we see no reason why it should not be

permitted to do so. If the gas company cannot meet this competition without impairing its service or financial stability then it will have to leave the field and confine its attention to those branches of service in which it is the most efficient.

A complaint also was made against respondent's "combination power rate for small motors" which reads as follows: "Where individual motors of less than 5 H. P. are installed by customers using electric light exclusively, the current for such motors may be measured through the lighting wattmeter, and in such cases consumers shall be charged the lighting rate of 3 cents per kw. hr. in lieu of the regular power rate of 75 cents per H. P. and 2 cents per kw. hr. for the current." The objection to this rate is the same as to the lighting rates, namely that it is applicable only to consumers who use electricity only for lighting. No amendment has been offered to correct this discrimination. If this rate was made applicable to all consumers irrespective of whether they use electricity exclusively or not, it would be acceptable and cause for complaint would be removed.

So far as we can see complaints numbered five, six and seven are without foundation. There is nothing in the rate schedule on file in this office that would permit the company at its option to charge either its flat or meter rate to consumers using 5 H. P. or more. As to the classification of lamps for hotels, clubs, and boarding houses, it does not appear that one classification applies in case electricity is used exclusively and another in case some other method is also used, at least the rate schedule on file here makes no such provisions. Nor do the rates on file for auditoriums, dance-halls, opera-houses, etc., make any difference in classification based on exclusive use of electricity as is alleged in the complaint filed.

*It is ordered,* That the respondent, the Chippewa Valley Railway, Light and Power Company, amend its present schedule of rates for electric light and power and place in effect as a substitute therefor, either Schedule A or Schedule B, or both giving consumers their option, as to which schedule they wish to come under.



## SCHEDULE A.

*Lighting Service.*

All lighting service furnished residences and businesses (hereinafter specifically referred to as classes A, B, C, D and E) including such incidental use of heating, or power used on lighting circuits and passing through the same meter shall be charged for as follows:

## READINESS-TO-SERVE RATE:

15 cents per month for each active connected incandescent unit of 50 capacity.

## ENERGY CHARGE:

3 cents per kw. hour for all current consumed.

FOR ALL SIGN, WINDOW DISPLAY, and advertising lighting on a yearly contract basis (hereinafter specifically referred to as class E) the rate shall be 5 cents per active 50 watt equivalent per month plus 3 cents for all current consumed.

## ARC LIGHTING:

The rate for commercial arc lighting shall be 45 cents per month for each 6 ampere a. c. lamp connected plus 3 cents per kw. hr. for all current consumed, provided that the maximum rate shall not exceed 6 cents per kw. hr. for the total current used each month. The company shall furnish the lamps and maintenance of the same at its own expense.

*Class A* shall include residences, dwellings, flats and private rooming houses. The active connected load shall consist of 60% of the first 500 watts connected and 33 1/3% of all additional watts connected.

*Class B* shall include retail and wholesale mercantile establishments, saloons, restaurants, depots, and all other consumers not herein otherwise specifically provided for. The active load or demand shall consist of 70% of the watts connected. The maximum rate in this class shall be 6 cents per kw. hr. for the total current used.

*Class C* shall include hotels, clubs, and boarding houses. The active load shall consist of 55% of the watts connected.

*Class D* shall consist of auditoriums, dance halls, opera houses, lodge rooms, churches, warehouses, warerooms of wholesale and jobbers' houses, and manufacturing plants. The active load shall consist of 40% of the watts connected.

*Class E* shall consist of unmetered lighting for signs, window display, or advertising purposes. The total connected load shall be deemed active.

#### EQUIPMENT AND RENEWALS:

In all foregoing rates, unless otherwise specifically stated, the consumer shall furnish and renew all lamps, except arc lamps, and all switching and wiring on the premises, and the company shall furnish arc lamps, transformers, meters, and sufficient wiring, pole line and other equipment necessary to deliver the current to the premises.

#### FLAT RATES:

The company shall not be required at its own expense to furnish or install meters for any consumer using less than five 50 watt units, or the equivalent thereof, in any one building, and shall be authorized to charge consumers using three or more such units a flat rate of 30 cents per month per unit in residences and 50 cents per month per unit in business places; or the company may, at its own option, install a meter for any such consumer, in which event the rate shall be as specified in the above classification.

#### MINIMUM RATE:

The company shall be authorized in every case where a meter is installed to make a minimum charge of \$1.00 per month, and to flat rate customers a minimum charge of 90 cents per month in residences and \$1.50 per month in places of business.

#### MAXIMUM RATE:

The maximum rate, except where authorized by the minimum charge herebefore provided for, shall in no instance exceed 9 cents per kw. hr.

The schedule for power service shall be amended so that

the "Combination Power Rate for Small Motors" shall read as follows: Where individual motors of less than 5 H. P. are installed by customers using electricity for lighting the current for such motors may be measured through the lighting watt meter, and in such cases consumers shall be charged the lighting rate of 3 cents per kw. hr. in lieu of the regular power rate of 75 cents per h. p. and 2 cents per kw. hr. for the current.

#### SCHEDULE B.

##### *Lighting Service.*

##### RESIDENCES:

In all residences the rate shall be 15 cents per month for each active connected incandescent unit of 50 watts capacity, or the equivalent thereof, and 3 cents per kw. hr. for all current consumed by the connected units, whether active or inactive. Active lights are lights used or connected for use in the following rooms: main hall, main stairway, parlors, library, one 50 watt unit in dining room, sitting room, living room, kitchen, den, music room, conservatory, butler's pantry, and one 50 watt unit on the second floor. Non-active lights shall include lights used on porches, in vestibules, basements, attics, closets, bedrooms, bathrooms, lavatories, wood sheds, stables, back halls, back stairways, one portable reading lamp used in active rooms, and all other rooms not herein otherwise specifically mentioned; provided the active lights shall not exceed 75% of the total installation.

##### BUSINESS:

Commercial lighting shall include retail and wholesale mercantile establishments, saloons, restaurants, depots and all other consumers not herein otherwise specifically provided for. Such lighting will be done by means of approved incandescent lamps, or by six ampere, a. c. arc lamps, at the option of the consumer, and the prices for such lighting shall be as follows:

**INCANDESCENT LIGHTING:**

The rate for business incandescent lighting shall be 15 cents per month for each 50 watt connected capacity, or its equivalent and 3 cents per kw. hr. for all current consumed; provided that to all consumers using 10% or less, of their total connected capacity for window display or advertising purposes, all lights so used shall be considered and paid for as non-active lights, at the rate of 3 cents per kw. hr. for the current actually consumed; and the maximum rate to all consumers who shall come within the terms of this proviso shall not exceed 6 cents per kw. hr. for the total current used.

**ARC LIGHTING:**

The rate for business arc lighting shall be 45 cents per month for each six ampere a. c. arc lamp connected, plus 3 cents per kw. hr. for all current consumed; the maximum rate per month, however, in such case shall not exceed 6 cents per kw. hr. for the total current used each month.

**READINESS-TO-SERVE RATING:**

In determining the readiness-to-serve charge for residences, and commercial lighting, all units of 8 c. p. or less shall be counted as 8 c. p. and rated at 30 watts per hour, and the readiness-to-serve charge for all such lights in active rooms shall be 9 cents per month in addition to the charge for current consumed.

**HOTELS, CLUBS AND BOARDING HOUSES:**

The rate shall be 15 cents per month for all active lights and 3 cents per kw. hr. for all current consumed. The classification of active and non-active lights shall be the same as for residences, except lights connected for use in dining rooms, buffets, bars, bowling alleys, billiard rooms, card rooms, barber shops, lobbies, main halls, corridors on each floor, wash rooms, and lavatories shall be deemed active lights.

AUDITORIUMS, DANCING HALLS, OPERA HOUSES, LODGE ROOMS, CHURCHES, WAREHOUSES, WAREROOMS OR WHOLESALE AND JOBBERS' HOUSES, AND MANUFACTURING PLANTS:

The rate shall be 15 cents per month for one-third of all connected units of 50 watts or its equivalent and 3 cents per kw. hr. for all current consumed, provided that all lights in general offices and clerical rooms of this class shall be rated as active lights.

#### EQUIPMENT AND RENEWALS:

In all foregoing rates, unless otherwise specifically stated, the consumer shall furnish and renew all lamps, except arc lamps, and all switching and wiring on the premises, and the company shall furnish arc lamps, transformers, meters and sufficient wiring, pole line and other equipment necessary to deliver the current to the premises.

#### FLAT RATES:

The company shall not be required, at its own expense, to furnish or install meters for any consumer using less than five 50 watt units, or the equivalent thereof, in any one building, and shall be authorized to charge consumers using three or more such units a flat rate of 30 cents per month per unit in residences and 50 cents per month per unit in business places; or the company may, at its own option, install a meter for any such consumer, in which event the rate shall be as specified in the above classification.

#### MINIMUM RATE:

The company shall be authorized in every case where a meter is installed to make a minimum charge of \$1.00 per month, and to flat rate customers a minimum charge of 90 cents per month in residences and \$1.50 per month in places of business.

#### *Power Service.*

The schedule for power service shall be amended in the manner indicated in Schedule A.

The utility shall notify this Commission within ten days as to what it elects to do under this order.

Dated at Madison, Wisconsin, this 11th day of November, 1912.

American Telephone and Telegraph Company  
Bureau of Commission Research  
Legal Department  
15 Dey Street, New York City

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## COMMISSION LEAFLET No. 15

March 1, 1913.

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### Recent Commission Orders, Rulings and Decisions from the following States:

California	New Hampshire
Florida	New Jersey
Maryland	New York
Massachusetts	Ohio
Missouri	Oklahoma
Nebraska	Oregon

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**NOTE:** This Department is prepared to furnish Associated Companies with information concerning the activities of all permanent supervising commissions including municipal commissions, state commissions, the Interstate Commerce Commission, and the Dominion and Provincial commissions of Canada.



## PART I.

### COMMISSION ORDERS, RULINGS AND DECISIONS DIRECTLY AFFECTING TELEPHONE AND TELE- GRAPH COMPANIES.

#### CALIFORNIA.

##### Railroad Commission.

**IN THE MATTER OF THE APPLICATION OF THE RAYMOND TELEPHONE COMPANY FOR PERMISSION TO RAISE TELEPHONE RATES FOR TELEPHONE SERVICE ON THE LINES OF SAID COMPANY BETWEEN RAYMOND AND THE PINES VIA COARSE GOLD AND FRESNO FLATS, IN MADERA COUNTY, CALIFORNIA.**

Application No. 89—Decision No. 381.

*Decided December 30, 1912.*

#### **Increase of Rates—Jurisdiction of Commission—Segregation of Utility Accounts from Mercantile Accounts.**

Upon application to increase rates for the purpose of eliminating certain variations in rates, it appeared that the applicant's telephone business was intimately associated with a mercantile business in which the applicant was materially interested, and that the accounts of the utility were so involved with the accounts of the mercantile enterprise that the applicant was unable to segregate the utility accounts.

The Commission denied the application upon the ground that it also involved the interests of a business entirely without the jurisdiction of the Commission, and ordered that the applicant should continue in effect the rates prevailing on October 10, 1911, in accordance with General Order No. 15,\* and that the applicant should also proceed to segregate the accounts and the interests directly attributable to the telephone service in such manner that the telephone situation might be presented not later than six months thereafter on a basis free from interests and considerations foreign thereto.†

\*Printed in Commission Leaflet No. 5, page 3.

†Editor's headnote.



*A. C. Shaw*, for The Raymond Telephone Company.  
*GORDON, Commissioner:*

This application is for permission to raise the rates for telephone service on the telephone lines of applicant between Raymond and The Pines via Coarse Gold and Fresno Flats, in Madera County, California.

It appears from the testimony introduced at the hearing that these lines and the service involved are intimately associated with a mercantile business in which the applicant in this case is materially interested, and the accounts of this public utility are so intimately involved with the accounts of the mercantile enterprise referred to that applicant was unable to segregate the accounts of the one and the other. From other evidence submitted to this Commission, it is apparent that this application is not made free of interests and considerations intimately involving a business and an enterprise entirely foreign to the scope and jurisdiction of the Commission, and for these reasons I recommend that the application be dismissed.

It appears that certain variations in rates exist which this application sought to eliminate. I recommend, however, that the telephone service rendered by The Raymond Telephone Company be continued on the basis of General Order No. 15,\* authorizing the continuance of rates on the basis of October 10, 1911, until the further order of this Commission, and that The Raymond Telephone Company be required to so separate and segregate the interests of this telephone company from the interests of the mercantile business as to be prepared to bring this situation again before the Commission at a later date to the end that existing variations in rates may eventually be eliminated.

I therefore recommend the following order:

#### ORDER.

The Raymond Telephone Company of Raymond, Madera County, California, having made application to increase telephone rates on the lines of said company between Raymond

\*Printed in Commission Leaflet No. 5, page 3.

and The Pines via Coarse Gold and Fresno Flats, Madera County, and it appearing further that the accounts and interests of said telephone company are intimately involved with the accounts and interests of an enterprise that ought to be entirely foreign thereto,

*It is hereby ordered*, That The Raymond Telephone Company be, and it hereby is, denied permission to increase rates as requested in the application in this proceeding.

*It is further ordered*, That The Raymond Telephone Company be, and it hereby is, directed to continue rendering telephone service at such rates and under such conditions as prevailed on October 10, 1911, in accordance with this Commission's General Order No. 15\* until the further order of this Commission.

*It is further ordered*, That The Raymond Telephone Company be, and it hereby is, directed to proceed to so segregate the accounts and the interests directly attributable to the service given by The Raymond Telephone Company that the telephone situation may be presented at a date not later than six months from the date hereof, on a basis free from interests and considerations that are foreign thereto.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of December, 1912.

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\*Printed in Commission Leaflet No. 5, page 3.

IN THE MATTER OF THE APPLICATION OF VARIOUS PUBLIC  
UTILITIES FOR PERMISSION TO CHARGE LESS THAN PUB-  
LISHED SCHEDULE OF RATES IN CERTAIN CLASSES OF CASES.

Case No. 293—Decision No. 424.

*Decided January 24, 1913.*

Free and Reduced Rate Service—Federal and State Governments  
—Fairs and Public Celebrations—Charity—Employees—  
Concessions under Contracts.

In accordance with the Commission's General Order No. 15,\* a number of utilities, including telephone and telegraph companies, gas and electric companies and water companies, filed applications for permission to continue concessions and deviations from the established rates. Thereupon the Commission made an order† calling upon all public utilities other than common carriers for statements classifying all concessions and deviations in effect on March 23, 1912, and entered upon an investigation into the entire question.

The Commission expressly confined its opinion and order to so-called "concessions" or "deviations" from the published rates, stating that its opinion and order did not apply to regularly published rates even in the case of special rates founded upon differences in quantity, time of supply or similar conditions.

The Commission made an exhaustive analysis of the data supplied by the utilities, classifying the various concessions and deviations reported by them and discussed the divergent views expressed by the utilities and by various state commissions.

*Held:* That the action of the Legislature in providing in the first instance that there should be no deviations from published rates, but empowering the Commission to specify the classes of cases which might constitute exceptions to this general rule, was doubtlessly taken for the purpose of enabling the Commission to determine the classes of cases in which it might be wise to authorize the continuance of such concessions as were being granted by the utilities.

That, in so far as possible, there should be no concessions or deviations from the published rates of public utilities. If it was desired to make donations, it would be preferable to make them in cash instead of in service. In this way a large number of inequalities and discriminations now existing would be removed and a higher morale established on the part of public utilities.

That utilities may, if they so desire, grant free or reduced rate service in those few specified classes of cases which seem to the Commission to have the most merit. It is entirely within the right of a utility to refuse any concession or deviation, but if any utility does grant concessions to

\*Printed in Commission Leaflet No. 5, page 3.

†Printed in Commission Leaflet No. 11, page 1.

authorized persons, it must do so uniformly without discrimination between members of the same class, under the same or similar conditions.

That the authority to give free or reduced rate service to the Federal and State Governments should be confined to granting such service to the government itself or to some department or institution thereof, and not to government officials or employees as individuals.

That the term "charity" will be used in its broad sense, as used in "In the Matter of Passes to Clergymen and Persons Engaged in Charitable Work," 15 I. C. C. 45, and will include churches and clergymen. Utilities should, of course, look into the question of whether the particular clergyman really needs the concession.

That, although some of the contracts for free or reduced rate service heretofore made by public utilities and not included in the classes of concessions and deviations authorized hereby, should properly be allowed to continue, such as contracts for right of way; nevertheless, many of the contracts heretofore made have been established through favoritism and discrimination and should not be permitted to stand as against the present policy of the State, unless it is clear that they must stand for legal reasons.

*Ordered*, That public utilities other than common carriers, may, if they so desire, grant free or reduced rate service to the Federal and State Governments and the political subdivisions thereof, including the departments thereof and to public institutions, fairs and other public expositions and celebrations, charity, and employees, as well as to the classes of cases specified in Section 17 of the Public Utilities Act, referring to telephone and telegraph companies.

That, within three months from the date of this order, all public utilities desiring to continue concessions established by contracts heretofore entered into and not otherwise provided for by this order, shall file with the Commission copies of such contracts as they desire to continue with explanations of the situation with reference to such contracts. In all cases in which utilities do not file contracts within the time specified, it shall be unlawful thereafter to charge any rate other than the rate specified in the schedules on file, provided that where a utility had a rate of general application to some class of consumers in effect on October 10, 1911, and also has a "standard" rate which is higher than such rate, the lower rate in effect on October 10, 1911, shall continue in effect as to the customers who enjoy such rates, until the Commission authorizes a change.

That this order shall apply only to rates and service over which the Commission has authority.\*

*E. S. Pillsbury*, for The Pacific Telephone & Telegraph Co.

*Guy C. Earl*, for Great Western Power Company and City Electric Company.

*H. H. Trowbridge*, for Southern California Edison Company.

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\*Editor's headnote.

## OPINION.

ESHLEMAN, THELEN and EDGERTON, *Commissioners*:

This opinion and order do not apply to regularly published rates, even if they be special rates varying from other rates because of difference in quantity, time of supply or similar conditions, but only to so-called "concessions". Throughout this opinion we shall use the words "concession" and "deviation" interchangeably to mean a charge which is not a published rate or filed as a rate, though it may be a percentage of a rate.

When the Legislature passed the Public Utilities Act in December, 1911, it specified the classes of cases in which common carriers might deviate from their published schedules of rates, following largely in this respect the provisions of the Interstate Commerce Act. With reference to public utilities other than common carriers, such as telephone and telegraph companies, gas and electric companies and water companies, the Legislature provided in the first instance that there should be no deviations from published rates, but also provided that the Railroad Commission should have the power to specify the classes of cases which might constitute exceptions to this general rule. This action with reference to public utilities other than common carriers was doubtlessly taken for the purpose of enabling this Commission to examine the extent to which such public utilities were granting concessions from their established rates and then to determine, after mature deliberation, the classes of cases in which it might be wise to authorize the continuance of such concessions. The will of the Legislature in this respect is expressed in Section 17 (b) of the Public Utilities Act, reading as follows:

"Except as in this section otherwise provided, no public utility shall charge, demand, collect or receive a greater or less or different compensation for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the rates, tolls, rentals and charges applicable to such product or commodity or service as specified in its schedules on file and in effect at the time, nor shall any such public utility

refund or remit, directly or indirectly, in any manner or by any device, any portion of the rates, tolls, rentals and charges so specified, nor extend to any corporation or person any form of contract or agreement or any rule or regulation or any facility or privilege except such as are regularly and uniformly extended to all corporations and persons; *provided*, that the commission may by rule or order establish such exceptions from the operation of this prohibition as it may consider just and reasonable as to each public utility."

The Commission, not knowing the extent of the deviations, being convinced that in some classes of cases it might be desirable to authorize the continuance of deviations and desiring to make investigations before reaching a final conclusion, deemed it wise to authorize the utilities to maintain the status quo if they so desired, until the Commission could have made a full and complete investigation into the entire subject. Accordingly, on March 7, 1912, the Commission made its General Order No. 15,\* which order, after referring to the provisions of Sections 14 (b) and 17 (b) of the Public Utilities Act, provides as follows:

*"Now, therefore, be it further ordered*, That the public utilities of this state, other than common carriers, present to this Commission, within thirty days from the time of service upon them of this order, applications for permission to charge less than the rates, tolls, rentals and charges specified or to be specified in their schedules as to such classes of cases in which such public utilities may desire to charge less than the rates, tolls, rentals and charges specified in such schedules. As to rates, tolls, rentals or charges which this Commission will have jurisdiction to establish after March 23, 1912, such public utilities may continue to charge such lesser rates, tolls, rentals and charges as they may now be charging, whether such rates, tolls, rentals or charges be set out in their schedules or are deviations therefrom, until the decision of this Commission upon such applications. This order shall not be construed to prevent such public

utilities from continuing to charge such rates, tolls, rentals or charges as they may desire to charge in any city and county or incorporated city and town as to which this Commission has not the power to establish rates, tolls, rentals or charges, subject to the ordinances or other regulations of such city and county or incorporated city or town."

Acting under said General Order, a number of utilities filed with this Commission formal applications for permission to continue deviations from established rates. These applications were as follows: Application No. 3, The Pacific Telephone & Telegraph Company; Application No. 80, Tuolumne County Electric Power and Light Company; Application No. 116, Great Western Power Company; and Application No. 117, City Electric Company.

In Application No. 3, The Pacific Telephone & Telegraph Company, after referring to the concessions which telephone and telegraph companies, under the provisions of Section 17 of the Public Utilities Act, are authorized to make to their own employees and to other telephone and telegraph corporations and common carriers, represented that it had been making concessions in the following classes of cases, which the applicant desires to continue:

(a) Cities, towns, villages, counties, and their various offices and departments, including school houses, fire departments, municipal council chambers, etc., as covered by municipal franchises, or by written agreements.

(b) Same as "a", but not covered by franchises or written agreements, but simply under a verbal understanding.

(c) Concessions to the Federal Government, when covered by written agreement.

(d) Concessions to corporations, companies, co-partnerships and individuals in consideration of grants of right of way, pole space, contract privileges and reciprocal exchange of service, where covered by written agreement.

(e) Same as "d". Not covered by written agreement, but by verbal understanding.

**The Tuolumne County Electric Power and Light Company**

applied for authority to depart from its fixed schedules for the sale of electricity in the following classes of cases :

- (a) Employees—to be given free service.
- (b) Churches and ministers—to be given reduced rates.
- (c) Municipalities—to receive free service for fire departments.
- (d) City of Sonora—to receive free service for City Hall.
- (e) Sonora Cornet Band—to receive free service.
- (f) Charitable affairs, such as parties and balls—to receive free service on occasions.
- (g) Sierra & San Francisco Power Company, from which applicant buys its electrical energy—to receive lights and power at cost for its office and employees.
- (h) City of Sonora—to receive lights for street service at reduced rates.

The Great Western Power Company asked permission to extend to all persons employed by it and by the California Electric Generating Company and the City Electric Company, subsidiary companies, a rate of  $2\frac{1}{2}$  cents per kilowatt hour for electric current for light, heat and power for domestic use, so as to encourage the use by employees of electricity for appliances, so that the employees might use their homes as experimental stations, as it were, to demonstrate the use of electric current for domestic purposes. The application of the City Electric Company was to the same effect.

These applications were consolidated for hearing and merged into a proceeding, on the Commission's own initiative, after going into the entire question, to which proceeding Case No. 293 was assigned.

It appearing to the Commission on the hearing of these applications that it was not yet in possession of sufficient evidence to enable it to pass intelligently on the questions presented, the Commission, on September 5, 1912, made an order\* in Case No. 293 calling upon all public utilities other than common carriers to file with the Commission a statement containing a segregation into the different classes of cases in which a product or commodity was, on March 23, 1912, being furnished or supplied by such utility at less than its

\*Printed in Commission Leaflet No. 11, page 1.



schedule rates, with the names of the persons or corporations receiving such lesser rates, arranged under appropriate classes, with such explanations as might be helpful to an understanding of the circumstances surrounding each case. Each utility was directed to specify the cases in which it desired to continue such deviations from published schedules. It was pointed out that the order did not refer to schedule rates varying from other schedule rates by reason of differences in time or amount of use of commodity or service, but rather to classes of cases, such as contracts for right-of-way, employees, charitable uses, educational purposes, the state or political subdivisions thereof, in which cases it has been more or less usual to grant such privileges and in which the compensation collected is not a schedule rate, though it may be some percentage thereof.

The Order furthermore contained the following paragraph:

"The Commission particularly desires that each such utility write to the Commission giving fully its views on the general question of deviations from published rates from the point of view of public policy, with particular reference to the class or classes of cases as to which the utility may desire to continue to deviate."

In response to this order, the Commission has received replies from between 200 and 250 utilities in the state, other than common carriers. These replies show quite clearly the situation as it exists in California to-day. The information so received will be analyzed under the following general heads: (1) telephone and telegraph companies; (2) gas and electric companies; (3) water companies.

#### 1. TELEPHONE AND TELEGRAPH COMPANIES.

Replies were received from 48 telephone and telegraph companies. Omitting for the moment The Pacific Telephone & Telegraph Company, and confining our attention to the remaining 47 companies which reported, it appears that of these companies, 16 reported that no deviations were made and the remaining 31 reported that concessions were being made to between one and twenty individuals or corporations, classified in accordance with the Commission's order. The follow-

ing table shows the classes of cases in which concessions are being made and the number of utilities making the concession in each case:

Class of concession.	Number of utilities making concession.
1. State, county and city governments, under franchises and otherwise, including public schools.	16
2. Railroad offices .....	13
3. Churches and clergymen .....	12
4. Clubs and lodges .....	12
5. Newspapers .....	5
6. Federal Government .....	4
7. Original subscribers .....	4
8. Rights-of-way .....	4
9. Charity, including Y. M. C. A.'s.....	3
10. Doctors .....	2
11. Exchange with power company .....	1

In addition to these classes of cases, the telephone companies reported quite a number of concessions to persons who may probably be classed as favored persons and who do not fall within any of the above classes.

The Pacific Telephone & Telegraph Company filed a full report, showing the classes of cases and each deviation within the class in which the Company, prior to April 1, 1912, was making concessions from its established rates. This report is divided into two portions, the first portion (being Classes A to H inclusive) being classes as to which concessions were voluntarily discontinued by the Company on April 1, 1912, and the second class of cases being those from I to N, inclusive, being the cases in which the company desires to continue to make concessions. The concessions in classes A to H, inclusive, were withdrawn by the Telephone Company not as the result of any provision of the Public Utilities Act or of any order of this Commission, but because the Telephone Company for its own purposes and in accordance with its policy as established at that time, desired to cease giving concessions theretofore voluntarily made. The classes of cases as reported by the Telephone Company, together with the number of telephones involved in each class, are as follows:

## I.

*Discontinued April 1, 1912.*

## A. Courtesy.

This class includes University of California and instructors therein; post offices; newspapers; public libraries; Chambers of Commerce; cemeteries; hotels; boards of trade; public officials; University of the Pacific; state officials, including certain members of the Legislature; clubs; large merchants; sanatoriums; hospitals; supervisors; charitable organizations; and a large number of individuals of whom most are prominent—totalling about 500 telephones.

B. Orphan asylums ..... 16 telephones

C. Kindergartens ..... 3 “

D. Boys and Girls Aid Societies ..... 9 “

E. Fraternal organizations, including  
clubs, lodges, Y. M. C. A.'s, Y. W.  
C. A.'s, N. S. G. W.'s, etc., about . 215 “

F. Churches—totalling about ..... 140 “

G. Other charitable institutions, includ-  
ing convents, missions, Salvation  
Army, day nurseries, Bible associa-  
tions, hospitals, homes of various  
kinds, Settlements, associated  
charities, humane societies, etc.,  
about ..... 200 “

H. Clergymen, totalling about ..... 1,000 “

## II.

*Still in Effect.*

I. Rights-of-way, pole space, contract  
privileges, reciprocal exchange of  
service, covered by verbal under-  
standing alone, etc., totalling about 190 telephones

J. United States Government ..... 21 “

K. Rights-of-way, pole space, contract  
privileges, reciprocal exchange of  
service, covered by written agree-  
ment—totalling about ..... 74 “

- L. Cities, towns, counties and their various offices and departments, as covered by municipal franchises or written agreements—totalling about ..... 500 “
- M. Newspaper concessions—toll revenues—totalling ..... 10 “
- N. Cities, towns, counties and their various offices and departments, under verbal agreement—about .. 340 “

The total amount of revenue which The Pacific Telephone and Telegraph Company saved when it cancelled the concessions heretofore given on classes A to H, inclusive, effective April 1, 1912, is as follows:

Class.	Monthly Saving.	Annual Saving.
A. Courtesy .....	\$1,253.65	\$15,043.80
B. Orphan Asylums .....	47.78	573.36
C. Kindergartens .....	5.25	63.00
D. Boys and Girls Aid Societies ...	16.75	201.00
E. Fraternal Organizations .....	700.85	8,410.20
F. Churches .....	200.15	2,401.80
G. Other Charitable Institutions ..	662.31	7,947.72
H. Clergymen .....	1,273.20	15,278.40
Total .....	\$4,159.94	\$49,919.28

It should be noted that the first concessions which The Pacific Telephone & Telegraph Company discontinued were largely those which it seems to us there is the best reason for allowing to stand, namely, those given for charitable purposes. The Commission having ruled herein that concessions for charitable purposes may be continued, the utilities should, in justice, make it very plain to those charities which have heretofore received concessions that it is not because of the Public Utilities Act or of any ruling of this Commission that these concessions must be withdrawn, but because of the voluntary desire of the utility in pursuance of its own policy.

We desire to comment briefly on the concessions which the Telephone Company desires to continue.

Item "I" in the list, consisting of concessions to corporations, companies, co-partnerships and individuals, in consideration of grants of rights-of-way, pole space, contract privileges and reciprocal exchange of service, where not covered by written agreement, consists of some 190 telephones. Written agreements accompany the cases specified in Schedule K, being contracts for telephone service in consideration of grants of right-of-way, pole space and other privileges. It will be noted that a part of the telephone concessions granted to cities, towns, villages, counties and other political subdivisions of the State are covered by franchises and other written agreements and that the remaining concessions are under verbal understandings.

## 2. GAS AND ELECTRIC COMPANIES.

Sixty-one gas and electric companies filed reports with the Commission. Of this number, 26 reported that they had no deviations from their published rates. The other 35 reported deviations in the following classes of cases:

Class of concession.	Number of utilities making concession.
1. Employees .....	20
2. State, county and city governments and departments .....	16
3. Special contracts .....	13
4. Rights-of-way .....	10
5. Charity .....	7
6. Churches .....	6
7. Educational .....	2
8. Federal Government .....	2
9. Chambers of commerce .....	2
10. Town theatre .....	1
11. Railroad .....	1

The above table simply shows the classes of deviations and the number of utilities which deviate as to each particular class. The table does not show the number of individual cases in each class of deviation. In order to show this con-

dition, we desire to refer to the report filed by the Pacific Gas and Electric Company, as follows:

Class of deviation.	Number.	Percentage.
A. Mixed service—power and electric together .....	69	10%
B. Long term contracts—establishing lower rates in consideration for long term contract .....	272	39 5/10%
C. High load factor or off-peak business..	36	5 2/10%
D. Large consumption .....	57	8 3/10%
E. Competition—lower rates to compete with other utilities supplying like service .....	90	13 1/10%
F. Reciprocal (discontinued) .....	2	3/10%
G. Part compensation for property or right of way acquired or leased ..	23	3 3/10%
H. Educational .....	1	2/10%
I. State and county institutions .....	13	1 9/10%
J. Consumers acquired with property—in which cases rates have not been increased to regular schedules .....	125	18 2/10%
<b>Total deviations .....</b>	<b>668</b>	<b>100%</b>

This Company also gives reduced rate service to its employees. It did not file a list of these employees or of the charitable institutions to which it grants concessions.

It should be noted that certain of the cases referred to by The Pacific Gas and Electric Company are not so much deviations from published rates as special rates established because of special circumstances, such as consumption at a time when the demand for electricity is not so great or lesser rates because of greater quantities of consumption. These remarks do not apply to the long term contracts, which constitute 39 5/10% of this company's business or to competitive rates, which constitute 13 1/10% of the company's business.

### 3. WATER COMPANIES.

One hundred and twenty-four water companies reported. Of this number, 60—being almost one-half—reported that

they have no deviations. The following table shows the classes of deviations and the number of corporations deviating in each class as to the remaining 64 companies:

Class of deviations.	Number of utilities deviating in each class.
1. Counties, cities and other political subdivisions..	30
2. Special contracts .....	26
3. Charity .....	16
4. Churches and clergymen .....	13
5. Rights-of-way .....	9
6. Employees .....	9
7. Railroads .....	5
8. Old customers or persons not stockholders ....	4
9. Clubs .....	2
10. Federal Government .....	1

The report also shows water being furnished to a number of persons, including several city trustees, in addition to those mentioned above.

To show the condition as applied to one of the larger water companies, we desire to draw attention to the report of the Peoples Water Company which supplies water to Berkeley, Oakland and vicinity. This report shows the following deviations:

1. Riparian or other water rights and rights-of-way under agreements .....	118
2. Religious institutions .....	36
3. Employees .....	14
4. Charity—indigent persons .....	8
5. Charitable institutions .....	7
6. Sectarian educational institutions .....	7

A somewhat different condition is shown by the Mokelumne River Power and Water Company, which shows deviations as follows:

1. Cemeteries .....	2
2. Fire Department .....	
3. Employees—all free .....	
4. Ministers .....	3
5. County watering troughs .....	
6. Ice Company—2/3 rate.	

A further illustration showing a situation slightly different is that presented by the report of the Monterey County Water Works, which shows deviations as follows :

1. Custom House at Monterey.
2. Churches—11.
3. Public libraries—2.
4. Rights-of-way—12.
5. Special contract, Pacific Improvement Company.

As heretofore noted, the Commission particularly requested the utilities to give their views fully on the general question of deviations from published rates from the point of view of public policy. Relatively, only a small number of utilities complied with the Commission's request in this respect. The replies received show a great divergence of views. Some utilities, particularly the smaller ones, expressed the view that there should be no deviations at all. One of these utilities states its conclusions as follows :

“The free list is the thief that robs and undermines any business.”

The sentiment against any deviations seems to be particularly strong among the water utilities, as to which almost fifty per cent. make no deviations. On the other hand, some of the utilities, particularly the larger ones, believe that deviations should be permitted if they are confined strictly to a few designated classes. One of these utilities does not favor the grant of electricity or power for rights-of-way, preferring cash payments, but does favor reduced rates for employees for experimental purposes and for charity and educational purposes. This utility believes that cities and counties should pay full rates, but that existing contracts should be honored. Another electric company believes that reduced rates for service should be given to employees to encourage the use of electric appliances in their homes, but is opposed to all other deviations. This utility believes that rights-of-way should be paid for in cash, that if it is desired to help charitable or religious organizations, the assistance should take the form of a cash donation, that concessions should not be made for educational purposes except in connection



with research work along electrical lines and that a preferential rate to a city, while lessening the taxes on the entire community, is an unfair burden upon those members of the community who are consumers of the company. Another company is opposed to all deviations, except for charitable purposes and employees. One of the largest gas and electric companies in the state is opposed to all deviations. This company makes cash donations to three charities. The classes of deviations which were most largely included in the lists of those which the utilities thought should continue were employees and charitable purposes (including churches). The utilities were also generally of the opinion that deviations granted to municipalities under franchises should continue and many of them desired the privilege of granting free or reduced rate service to certain departments of the city governments, such as the fire department, public libraries and the public schools. Those telephone companies which are granting concessions to railroads with respect to telephones in railroad depots nearly all regarded the arrangement as unjust, and were of the opinion that the railroads should pay full rates.

A similar divergence of views appears from the legislation of other States. Some States, such as Massachusetts, while authorizing deviations from the rates of common carriers in specified cases, do not authorize any deviations from the rates of public utilities other than common carriers.

Wisconsin does not seem to permit any deviations except that, under Section 92 of the Public Utilities Act, public utilities may continue to furnish service on the terms specified in any existing contract executed prior to April 1, 1907.

Section 75 of the Public Service Commission Act of Ohio grants permission to all public utilities to grant free or reduced rate service to the United States Government and the state government or any political subdivision thereof, for charitable purposes, fairs or expositions and to any officer or employee of the utility. The Ohio Commission is inclined to construe these exceptions strictly, as is shown by the following extract from a letter from that Commission :

**"The Ohio Commission stands against the issuing of free or reduced rates to any person or class of persons, as a rule, in any community, and is inclined to give strict construction to the statute and to stand clearly upon the terms thereof."**

On the other hand, a large number of States specify certain classes of cases in which public utilities are permitted to grant concessions from their published rates. Washington has gone so far as to work out a special set of cases for each class of such public utility and to incorporate these provisions into the Public Service Commission Act. This act provides that gas and electric companies may grant concessions to specified classes, that telephone and telegraph companies may grant concessions to other classes, and that water companies, wharfingers and warehousemen may grant concessions to still other classes.

The Virginia Corporation Commission is authorized to approve reduced rates for charitable institutions.

The Oklahoma Corporation Commission writes as follows:

**"As to telephone, gas, electric and that class of public service this commission has ruled that they may give free service to the municipal officers, if such is provided in the franchise, or may do so by agreement. They may give reduced or free rates to churches, charitable or eleemosynary institutions and may give reduced or free rates to their employees, same being considered as a part of the salary paid the employees. We do not allow free service given for the use of grants of right-of-way. This could be greatly abused. We think it best for the company to pay for the right-of-way and charge for its service."**

This Commission is of the opinion that, in so far as possible, there should be no concessions from the published rates of public utilities. We believe that if it is desired to make donations it would generally be preferable to make the donations in cash instead of in service. We believe that in this way a large number of inequalities and discriminations now existing would be removed and a higher morale established on the part of the public utilities. On the other hand, we

recognize that long standing conditions cannot always be remedied at once. We have accordingly decided, under the authority conferred upon the Commission by the Public Utilities Act, to authorize for the present the continuance of concessions in those few classes of cases which seem to the Commission to have the most merit and at the same time, to point out the way to the ultimate condition in which every person who receives service from a public utility pays for what he gets.

In permitting the utilities to continue deviations in the classes of cases specified in the order, we do not wish to be understood as saying that the utilities should grant deviations in those classes of cases. The effect of this Commission's order will simply be to permit the utilities, if they so desire, to grant free or reduced rate service in those classes of cases. If any utility does not desire to deviate from its published rates, it is entirely within its right to refuse any deviation. However, if any utility does grant concessions to any of the four classes of persons authorized in the order, it will be expected to do so uniformly without discrimination between members of the class, under the same or similar conditions.

The authority to give free or reduced rate service to the Federal and State governments and political subdivisions thereof, including the departments thereof and public institutions, should be confined to granting such free or reduced rate service to the government or department or institution itself and not to an official or employee thereof. The practice of granting free or reduced rate service to trustees, supervisors, members of the legislature and other public officers, as individuals, should cease. It is one thing to grant a free telephone to the office of the city council and an entirely different matter to put such telephone into the home of a councilman.

The term "charity" will be used in its broad sense, as used in "In the matter of passes to clergymen and persons engaged in charitable work," 15 I. C. C. 45, in which case it is said at page 46:

"The courts have been consistently liberal in giving construction to the words 'charitable' and 'eleemosynary', and we see no reason for being unduly narrow in interpreting these words as found in the act. A charitable institution is one which is administered in the public interest and in which the element of private gain is wanting. This definition is broad enough to include hospitals, almshouses, orphanages, asylums and minor institutions. This enumeration is not intended to be exclusive—it is only representative. It is important to note that such an institution does not necessarily lose its charitable character by reason of the fact that it is under the management of a particular denomination or sect, or because a charge is collected from some or all of those who enjoy its privileges. It is only necessary that it be conducted in the public interest and not for private gain."

The word "charity", as so defined, would include churches and clergymen. In giving free or reduced rate service to clergymen, the utilities will, of course, look into the question of whether the particular clergymen really need the concession.

While the Commission is inclined to the opinion that no contract for its service entered into by a public utility can stand as against a general statute passed in the exercise of the police power of the State prescribing a method of supervision and regulating the public utilities of the State and orders of this Commission made after due process under such statute, yet, inasmuch as the matter is directly in issue in several cases now pending before this Commission, we do not feel that we should pass upon it here. While we are of the opinion that some of the contracts for free or reduced rate service heretofore made by public utilities and not included in the four classes of deviations which will be authorized should properly be allowed to continue, such as contracts for right-of-way heretofore entered into, and while the rate established by other contracts may well be regularly filed by the utility because of difference in conditions justifying a different classification and a different rate, as

distinguished from a concession, the Commission is also of the opinion that many of the contracts hitherto established have been established through favoritism and discrimination, and should not be permitted to stand as against the present policy of the State, as expressed in the Public Utilities Act, unless it is clear that they must stand for legal reasons. The order in this case will accordingly provide, that within three months from its publication each public utility of the State which has entered into contracts for free or reduced rate service shall file with the Commission a list of those contracts which the utility desires to continue, with such details with reference to each case that the Commission may intelligently act thereon. The utilities should, wherever possible, bring the rates established in the contracts within their regularly published rates, in which case the customer will pay his rate not by virtue of his contract, but by virtue of the rates on file with this Commission. The utilities should try to weed out all such cases and to present to the Commission only those contracts which establish rates which are not published. When a utility had a rate of general application to some class of its customers in effect on October 10, 1911, and also has a "standard" rate which is higher, the lower rate in effect on October 10, 1911, shall continue in effect as to the customers who enjoyed such rate until the Commission, on application therefor, authorizes a change.

We submit herewith the following form of order :

### ORDER.

Section 17 (b) of the Public Utilities Act, providing in part that no public utility shall charge, demand, collect or receive a greater or less or different compensation for any product or commodity furnished or to be furnished or for any service rendered or to be rendered than the rates, tolls, rentals and charges applicable to such product or commodity or service as specified in its schedules on file and in effect at the time, provided that the Commission may by rule or order establish such exceptions from the operation of this

prohibition as it may consider just and reasonable as to each public utility, and the Commission having held a public hearing on the class or classes of cases, if any, in which exceptions from the operation of said section should be established, and having called upon all the public utilities of the State to furnish lists of their concessions from published rates as distinguished from regularly filed rates, and suggestions for the correct rule to be established, and careful consideration having been given to all the aspects of the question,

*It is hereby ordered as follows:*

1. The public utilities of this State, other than common carriers, may, if they so desire, in addition to the classes of cases specified as applicable to them in Section 17 of the Public Utilities Act (referring to telephone and telegraph companies) grant free or reduced rate service to the Federal and State governments and the political sub-divisions thereof, including the departments thereof, and public institutions; fairs and other public expositions and celebrations; charity, as defined in the opinion of this case; and employees.

2. Within three months from the date of this order, all public utilities desiring to continue concessions established by contracts heretofore entered into and not coming under the provisions of paragraph (1) of this order, shall file with this Commission correct copies of such contracts as they may desire to continue, with such explanations, if any, as may show to the Commission clearly the situation with reference to such contracts, whereupon the Commission will decide whether or not it will permit such contracts to stand during their term. In all cases in which utilities do not file contracts within the time herein specified, it shall be unlawful thereafter to charge any rate other than the rate specified in the schedules on file with this Commission as applicable to the class of service specified in the contract; provided, that where a utility had a rate of general application to some class of consumers in effect on October 10, 1911, and also a "standard" rate which is higher than such rate, the lower rate in effect on October 10, 1911, shall continue

in effect as to the customers who enjoyed such rate until the Commission, on application therefor, authorizes a change. This paragraph applies to all public utilities other than common carriers, whether they have hitherto filed applications with this Commission or not.

3. This order shall apply only to rates and service over which this Commission has authority.

4. Applications No. 3, No. 80, No. 116, and No. 117, in so far as their prayer comes within the relief hereinbefore in this order granted, are hereby granted and in other respects denied.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 24th day of January, 1913.

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IN THE MATTER OF THE APPLICATION OF THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY FOR AUTHORIZATION TO PURCHASE ALL THE ISSUED CAPITAL STOCK AND BONDS OF SAN GABRIEL VALLEY HOME TELEPHONE COMPANY, AND UPON THE ACQUISITION OF SAID STOCK AND BONDS TO ACQUIRE ALL THE PROPERTY OF SAN GABRIEL VALLEY HOME TELEPHONE COMPANY, AND OF SAN GABRIEL VALLEY HOME TELEPHONE COMPANY FOR AUTHORIZATION TO SELL ITS PROPERTY TO THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY WHEN THAT COMPANY SHALL HAVE ACQUIRED ALL THE STOCK AND BONDS OF SAN GABRIEL VALLEY HOME TELEPHONE COMPANY. INTERVENTION OF THE CITY OF ALHAMBRA.

Application No. 281.—Decision No. 447.

*Decided February 7, 1913.*

Consolidation—Equal Treatment of Long Distance Lines—Routing of Messages—Compilation of Directories—Minimum Rates—Maximum Radius of Service—Form of Contract—Minimum Service Requirements—Standards of Construction—Segregation of Toll Revenues.

Application for an order authorizing the purchase of all of the capital stock and bonds and all of the property of the San Gabriel Valley Home Telephone Company by The Pacific Telephone and Telegraph Company,

for the purpose of consolidating the two telephone systems. The City of Alhambra, wherein the two companies operated, was granted leave to intervene and its request that certain conditions be embodied in the order of the Commission and that the effectiveness of the order be made contingent upon the assent of the City thereto, was granted for the reasons set forth by the Commission in granting a similar request by the City of Pasadena in the Application of The Pacific Telephone and Telegraph Company to Purchase the Capital Stock of the Home Telephone and Telegraph Company of Pasadena.\*

The Commission held that the proposed consolidation was for the best interest of all concerned and that public convenience and necessity would be served thereby and that the application should be granted under reasonable restrictions and limitations. Conditions looking to the safeguarding of the interests of the public were inserted in the order which was made contingent upon the passage by the City of Alhambra of an ordinance approving the consolidation and the terms and conditions of the order.

The order contained provisions, among others, with respect to the availability of toll service, routing of messages, equality of service to the United States Long Distance Telephone and Telegraph Company and The Pacific Telephone and Telegraph Company, compilation of directories, minimum rates, maximum radius of service, form of contracts, specific minimum service requirements, standards of construction and the segregation of toll revenues.†

*H. D. Pillsbury*, representing The Pacific Telephone and Telegraph Company.

*Arthur Wright*, representing United States Long Distance Telephone and Telegraph Company.

*Edgar O. Fawcett*, representing San Gabriel Valley Home Telephone Company.

*Sloan Pitzer*, representing City of Alhambra.

*S. M. Haskins*, representing Los Angeles Home Telephone Company.

## OPINION.

**EDGERTON, Commissioner:**

This is an application by The Pacific Telephone and Telegraph Company, joined in by San Gabriel Valley Home Telephone Company, for an order authorizing the purchase of said The Pacific Telephone and Telegraph Company of all of the capital stock and bonds of San Gabriel Valley Home Telephone Company, and upon the acquisition of said stock

\*Printed in Commission Leaflet No. 8. page 7.

†Editor's headnote.



and bonds authorizing the said first named company to acquire all of the property of said last mentioned company, and authorizing said San Gabriel Valley Home Telephone Company to sell all of its property to said Pacific Telephone and Telegraph Company when said last mentioned company shall have acquired all of the stock and bonds of said San Gabriel Valley Home Telephone Company.

Both of the applicants herein are operating telephone systems in the City of Alhambra and in the Towns of Arcadia and El Monte, in the County of Los Angeles, and it is the purpose of this application to obtain permission to consolidate these two telephone systems into one system.

The Pacific Telephone and Telegraph Company installed its service in the City of Alhambra about the year 1903 without having obtained a franchise from said city. Thereafter, and for a long period of time, there was a controversy between said city and said telephone company as to the necessity of said company obtaining a franchise from said city. Finally, after the decision of the United States Supreme Court, in the case of the City of Pomona vs. The Pacific Telephone and Telegraph Company, said company applied to the trustees of the City of Alhambra for a franchise. Thereupon, the City of Alhambra demanded that a consolidation be effected within sixty days, of the San Gabriel Valley Home Telephone Company's plant and that of The Pacific Company so that the double telephone system would be done away with and the citizens would be enabled to use a single system. No consolidation was effected and the trustees of the City of Alhambra denied the application of The Pacific Company for a franchise and ordered them to remove their poles and wires from the streets. Thereafter, an agreement of consolidation was effected between applicants herein.

After the application herein was filed, the City of Alhambra asked and was granted leave to intervene. Said city was represented at the hearing and made no objection to the granting of the application, but requested that certain conditions be put in the order of the Commission and that the effectiveness of the Commission's order be made contingent on the assent of the city thereto. A similar re-

quest by the City of Pasadena was granted in Applications Nos. 54 and 58\*, and for the reasons therein set out, I recommend that this request be granted.

The United States Long Distance Telephone and Telegraph Company has been serving the patrons of the San Gabriel Valley Home Telephone Company with a long distance service and it is proposed to permit or provide for long distance service from the consolidated exchange with both the United States Long Distance Telephone and Telegraph Company and the toll system of The Pacific Telephone and Telegraph Company. The United States Long Distance Telephone and Telegraph Company requests that certain conditions be incorporated in the order of the Commission, safeguarding its interests.

After careful consideration, I am convinced that it is to the best interest of all concerned that this proposed consolidation be sanctioned by the Commission and that public convenience and necessity will be served thereby. Conditions looking to the safeguarding of the interests of the public have been inserted in the following order.

No value is herein found on either of the plants mentioned in this application, nor on the consolidated plant as a result of merging both these plants, and it should be clearly understood that the sanction of this Commission to the transfer of the property herein mentioned in no wise binds this Commission, nor any rate-fixing or regulating body, as to the values of said plant.

The following form of order is herewith submitted:

### ORDER.

Application having been made by The Pacific Telephone and Telegraph Company for authorization to purchase all the issued capital stock and bonds of San Gabriel Valley Home Telephone Company, and upon the acquisition of said stock and bonds to acquire all the property of San Gabriel Valley Home Telephone Company; and of San Gabriel Valley Home Telephone Company for authorization to sell its property

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\*Printed in Commission Leaflet No. 8, page 7.

to The Pacific Telephone and Telegraph Company when that company shall have acquired all the stock and bonds of San Gabriel Valley Home Telephone Company; and the City of Alhambra having intervened; and a hearing having been held upon said application and intervention; and it appearing to the Commission that the application should be granted under reasonable restrictions and limitations,

*It is hereby ordered,* That the application of The Pacific Telephone and Telegraph Company for authorization to purchase all the issued capital stock and bonds of San Gabriel Valley Home Telephone Company and upon acquisition of said stock and bonds to acquire all the property of San Gabriel Valley Home Telephone Company, and of San Gabriel Valley Home Telephone Company for authorization to sell its property to The Pacific Telephone and Telegraph Company when that company shall have acquired all the stock and bonds of San Gabriel Valley Home Telephone Company, be and the same is hereby granted upon the following terms and conditions, and contingent upon the passage of an ordinance by the City of Alhambra approving said purchase and sale and said terms and conditions.

## I.

### *Toll Rates and Service.*

(a) Toll service shall be maintained and be at all times available to all present and future telephone subscribers who may be subscribers of the consolidated telephone service in Alhambra, so that any subscriber in Alhambra may have incoming service from and outgoing service to the existing toll lines now entering Alhambra or any future lines which may be built thereto, and it shall be optional with these subscribers over which toll system they shall be given connection in so far as such option is made possible by the terminal facilities to which the said toll lines may have access elsewhere.

Ample and suitable space or room for facilities shall be furnished the United States Long Distance Telephone and Telegraph Company, its successors and assigns, in any build-

ing in which the exchange telephone service shall be established, in which said long distance company shall have the right to set up and maintain and operate sufficient and satisfactory long distance equipment and apparatus for caring for and conducting its long distance business both incoming and outgoing.

The United States Long Distance Telephone and Telegraph Company shall have the right to install apparatus, appliances, equipment and facilities for the carrying on, operating, and caring for its long distance business, and shall employ on its own account operators and employees necessary to conduct such business.

The physical connection between the long distance apparatus and equipment of said United States Long Distance Telephone and Telegraph Company and the apparatus of the local plant shall be made in a manner suitable to the carrying on of said long distance business, to the advantageous operation of the Long Distance apparatus and lines, and proper service for the patrons of the said local company and without unnecessary cost. The patrons of the said local company shall have the right and option to call for long distance service over the lines of the United States Long Distance Telephone and Telegraph Company, and calls made by patrons of the local company for such service shall be so handled by the operators of the local company that the service given to the patrons of the local company by the said Long Distance Company shall not be in any way at a disadvantage. All messages, both incoming and outgoing, over the lines of the Long Distance Company shall be handled promptly by the operators of the local company and with the same promptness that incoming and outgoing messages are handled over the long distance lines of any other company or over the long distance lines of the local plant or exchange.

The Long Distance Company shall have the right, subject to the approval of the Railroad Commission of the State of California, to designate the name by which its service shall be called and published.

Long distance service to or from the said United States Telephone and Telegraph Company shall be handled by the

local company without unnecessary hindrance, delay or expense and without any action or suggestion on the part of any operator or employee of the local company that might tend to influence the patron in his selection of the long distance lines to be used.

As new or additional equipment or alterations in equipment are made by the local company, the said Long Distance Company shall be given the information at as early a date as possible of any contemplated changes and permitted to do anything necessary to bring its equipment into proper relations with the proposed change, and no delay or hindrance shall be made by the local company in this connection nor in the event the said Long Distance Company shall desire to make changes in or additions to its own apparatus.

The United States Long Distance Telephone and Telegraph Company shall maintain its present particular party long distance service, and may make such particular party service and two-number service optional after approval by the Railroad Commission of the State of California.

The toll service, both incoming and outgoing, destined to or originating at the stations of the Alhambra local company situated in the towns of El Monte and Arcadia, shall be handled in the same manner as at the present time, that is to say, patrons calling for the service of the said United States Long Distance Telephone and Telegraph Company shall be promptly connected with the lines of the United States Long Distance Telephone and Telegraph Company by the operators of the local company without unnecessary hindrance, delay or expense and without any action or suggestion on the part of any operator or employee of the local company that might tend to influence the patron in his selection of the long distance line to be used, and messages destined over the lines of the said Long Distance Company for persons or patrons at El Monte and Arcadia shall be handled without unnecessary hindrance or delay by said local company. The operators of the local company at El Monte and Arcadia shall obey all rules and regulations of the said Long Distance Company in so far as the handling of such long

distance business coming from or destined to the lines of said company is concerned.

Whenever, as a result of sufficient development or in the judgment of the said United States Long Distance Telephone and Telegraph Company, business at either El Monte or Arcadia warrants, it may, subject to the provisions of law, install, maintain, and operate a long distance switchboard at such towns under the same conditions as exist in the City of Alhambra; the same provisions of this order applying at Alhambra for the conducting of the business there and the rights of said Long Distance Company which also exist and apply at El Monte and Arcadia with the exception just noted, subject to the order or approval of legally constituted authority.

(b) The Pacific Telephone and Telegraph Company shall maintain its present long distance service of whatever kind until the further order of this Commission, and shall enjoy the same protection against unnecessary hindrance, delay or expense with reference to any act or suggestion or interference on the part of any operator or employee or agent of the United States Long Distance Telephone and Telegraph Company, as is provided for that company in the above paragraph providing for the association of the two companies.

(c) A directory or directories showing the subscribers of the Alhambra exchange and their respective telephone numbers and otherwise compiled according to the usual practice of the two companies, shall be furnished each of the subscribers to the consolidated service in Alhambra, Arcadia and El Monte not less than twice each year. Such directory or directories shall also contain the names and numbers of all the subscribers of The Pacific Telephone and Telegraph Company of the City of Los Angeles and contiguous territory; and a local directory or directories shall be furnished each of such subscribers, which shall contain the names and numbers of all the subscribers to the consolidated service in the City of Alhambra, El Monte and Arcadia, not less than twice each year in addition to and supplementary to the general directory first provided for. A directory or directories shall also be furnished each of the subscribers to the

consolidated service in Alhambra, El Monte and Arcadia by the United States Long Distance Telephone and Telegraph Company not less than twice annually, containing all the subscribers of the Home Telephone and Telegraph Company of Los Angeles and also the subscribers, with their respective numbers, of other independent companies in territory contiguous to Los Angeles in accordance with the usual practice of the United States Long Distance Telephone and Telegraph Company.

Whenever any telephone number or numbers are changed the local company shall immediately notify the said United States Long Distance Telephone and Telegraph Company of such change in number or numbers, and such notification, inclusive of all changes made in the intervals, shall be made daily, and all of the companies involved in the lists of telephone subscribers necessary to the completion of the telephone directories herein provided for, shall co-operate to the end that such directories shall be complete for the telephone field involved and shall be promptly and regularly revised to the end that such directories may be at all times as complete and up-to-date as is reasonably possible in accordance with existing telephonic needs; this clause to apply to such telephone companies whether or not they appear of record in this case.

## II.

### *Local Rates and Service.*

The rentals charged the subscribers to the consolidated service in the City of Alhambra, and the service given and facilities afforded by the exchange or exchanges of said consolidated service, shall conform to the following requirements until altered by constituted authority.

(a) The minimum rate for the several classes of service now prevailing in the systems of the San Gabriel Valley Home Telephone Company and The Pacific Telephone and Telegraph Company in Alhambra, El Monte and Arcadia, respectively, or the contiguous territory served therefrom, and the maximum radius to, through and over which

such rates apply under the same several rates for the various classes of service now existing under the system, respectively, shall in the several instances prevail as the maximum rate and the minimum radius applicable for the several classes of service involved.

(b) Service shall be rendered by the operating company on application and the signing of the company's contract, which contract shall be subject to the approval of the City of Alhambra, under the rates applicable to the various classes of service, with reasonable promptness, and without the requirement of a deposit of any sum as a prerequisite to the installation of service. No requirement involving any sum in the nature of a penalty shall apply as a condition of the contract under which service shall be installed.

(c) The optional two-number and particular party service of The Pacific Telephone and Telegraph Company's lines between the City of Alhambra and the City of Los Angeles and other places on its lines shall be maintained as it now exists unless a change is authorized by constituted authority.

(d) With reference to the efficiency of exchange service, the following conditions shall be met as the minimum requirements of efficient service under normal operating conditions:

(1) The average time for answering line signals shall not exceed four seconds.

(2) The percentage of line signals answered in ten seconds or under shall not be less than 95%.

(3) The average time for the disconnection of calls shall not exceed four seconds.

(4) The percentage of disconnections within eight seconds shall not be less than 95%.

(5) The calls not affected by operators' errors shall not be less than 98%.

(6) The above service requirements shall apply under normal conditions, and at no time shall the ratio of operators to traffic handled be less than is necessary to the maintenance of these standards under normal conditions.



## III.

*General and Miscellaneous Requirements.*

(a) Within a reasonable time after the purchase by The Pacific Telephone and Telegraph Company of the stock and bonds of San Gabriel Valley Home Telephone Company, as provided for in this order, The Pacific Telephone and Telegraph Company shall acquire all of the property and rights, inclusive of the franchise of San Gabriel Valley Home Telephone Company as further provided for in this order.

(b) The interchange of service between the two systems now existing and pending their final complete physical consolidation shall be effected within thirty days of the date of this order, and the engineering work necessary to effect a complete physical consolidation of the two systems shall thereafter proceed with reasonable diligence and shall be fully completed by May 1, 1913. Strict adherence to the service requirements hereinbefore outlined will not be insisted upon during the time previous to complete physical consolidation, but allowance will be made for inherent difficulties in rendering first-class service during the time of effecting physical consolidation of the systems involved.

(c) The construction to be retained in service in the course of the physical consolidation as well as future installations shall, in so far as located within incorporated cities, be subject to the approval of the constituted authorities of such cities and shall conform to the ordinances of said cities now or which may hereafter be in effect. As nearly as is reasonably possible, installation of equipment or facilities without said cities having to do with the exchange limits involved shall follow the construction standards observed within the cities in so far as they may be applicable under standard construction. Particularly shall interior block construction for the business sections and rear property line construction for the residence section prevail in the preservation of existing facilities as well as future installations, subject to the approval of constituted authorities, and conditioned upon the necessary rights-of-way being obtainable

from property owners without charge or for reasonable compensation.

(d) For the purpose of determining gross receipts and percentages involved in payments to the City of Alhambra the companies shall make a just segregation of toll revenues based upon a pro rata determined by a consideration of toll investment and expenses and exchange investment and expenses. In case the company and the city do not agree as to such segregation, the party dissatisfied shall have the right to apply to the Railroad Commission of the State of California, whose determination with reference thereto shall be final.

(e) The provisions of this order shall become effective only upon the concurrence, as expressed by ordinance, of the Board of Trustees of the City of Alhambra, and the terms and conditions of this order shall become effective concurrently with such approval by said Board of Trustees.

(f) After the terms and conditions of this order shall have become effective and the property and rights of the San Gabriel Valley Home Telephone Company of Alhambra shall have been assigned and transferred to The Pacific Telephone and Telegraph Company, under the terms and conditions herein provided for, which are declared to be just and reasonable, it is contemplated hereby that the true ownership and control of said consolidated telephone service and the control and management thereof shall at all times appear and be made in public in accordance with the true facts involved.

(g) Nothing in this order made by the Railroad Commission of the State of California, or in any of the proceedings preliminary thereto, shall be deemed in any way to be an acceptance, either by the Railroad Commission or the City of Alhambra, of the valuations placed upon the stock and bonds of San Gabriel Valley Home Telephone Company, or of the property rights, franchises or privileges involved in the transfer herein provided for, the value of such stock and bonds and of such property rights, franchises or privileges as are involved, being expressly left open.

(h) Nothing in any order made by the Railroad Commission, or in the proceedings preliminary thereto, shall be deemed in any way to constitute a contract between the said telephone companies, or any of them, and the City of Alhambra, or the State of California. It is intended hereby to establish certain service, construction and rate regulations to which said companies, and each of them, much conform, until otherwise provided for by law.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 7th day of February, 1913.

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IN THE MATTER OF THE APPLICATION OF SARATOGA TELEPHONE  
COMPANY FOR PERMISSION TO INCREASE RATES.

Application No. 133.—Decision No. 458.

*Decided February 14, 1913.*

**Farm Lines—Increase of Rates—Switching Charge—Public  
Profession.**

Upon application by the Saratoga Telephone Company to increase its rates 25 cents per month, it appeared that the applicant's system consisted of farmer lines extending beyond the usual limits for such lines into the switchboard of The Pacific Telephone and Telegraph Company at Saratoga. Under an order to show cause, The Pacific Telephone and Telegraph Company was formally made a party to the proceedings.

The Commission found that The Pacific Telephone and Telegraph Company had permitted or forced the Saratoga Telephone Company to build its lines beyond the usual point designated for farmer lines and into the former company's switchboard at Saratoga with the result that such facilities as were in existence for handling business within the normal exchange radius were the property of the applicant and further, that, contrary to its public profession as set forth in its rate sheet for the Saratoga territory, The Pacific Telephone and Telegraph Company was giving no exchange service whatever in Saratoga other than was comprised by a single toll station in the office of the exchange. The Commission found further that, of the rates filed by the applicant, The Pacific Telephone and Telegraph Company collected \$1 per month from each subscriber and the applicant collected the balance. Out of this balance, the applicant was compelled to pay certain living quarters expenses and part of the wages of the operator in charge of the service, which was the serv-

ice that The Pacific Telephone and Telegraph Company professed to give. A demand for continuous service having developed, this application was made by the Saratoga Telephone Company for the purpose of obtaining the means to pay the wages of an additional operator to render the service which The Pacific Telephone and Telegraph Company professed to give.

The Commission held that it was the duty of The Pacific Telephone and Telegraph Company to maintain and render exchange service such as it professed to render and such as was defined by the rate sheet filed with the Commission and to meet those normal duties, responsibilities and expenses which it had been imposing upon the applicant. The Commission refused to grant the application upon the ground that the applicant was normally entitled to the service received from The Pacific Telephone and Telegraph Company for 25 cents per subscriber per month and that the application was made for the purpose of further increasing the present unreasonable charge made necessary in paying the wages of an operator to handle the service which The Pacific Telephone and Telegraph Company should normally render.

*Ordered*, That the application be denied.

That The Pacific Telephone and Telegraph Company forthwith render service in and about Saratoga at the rates on file; that it immediately file rates covering those normal classes of service which are not now provided for in its rate sheet on file; and that it pay the entire expense of operating its exchange at Saratoga, including the wages of operators sufficient to maintain an adequate twenty-four hour service.\*

## OPINION.

*GORDON, Commissioner:*

This application is for permission to increase telephone rates. A public hearing was held and the testimony developed, in conjunction with the investigations of this Commission, disclosed a peculiarly conflicting and illogical situation, a brief review of which is essential preliminary to the order which I shall recommend in this case.

The Saratoga Telephone Company is an organization brought into existence and maintained to effect a telephone service which it was apparently impossible to secure from The Pacific Telephone and Telegraph Company in the past, which, however, has maintained a pretense of serving this field. For this reason, under an order to show cause, The Pacific Telephone and Telegraph Company was formally made a party in these proceedings. The testimony makes

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\*Editor's headnote.

plain that the individuals involved in the Saratoga Telephone Company had no desire to enter the telephone business and that they have not continued in the telephone field as a business proposition, but have been practically compelled to invest money in lines and facilities and to collect regular charges for the maintenance thereof in order that they might have and enjoy a telephone service which ought to have been available without any such necessity on their part.

In every essential part, the system of the Saratoga Telephone Company is what is generally termed in this State a "farmers' line company". This is a classification used for a service usually reaching rural development under which the telephone users build their own lines to the town limits of the nearest telephone exchange, supply their own instruments, maintain both and make connection with the exchange system at the town limits, thereafter securing switching service with an exchange system at a very nominal charge. It is and has been a normal field in which this service has adequately met one of the difficult problems having to do with telephone expansion.

At Saratoga, the responsibilities above described, *i. e.*, the building of lines to the town limits, the supplying of instruments and maintenance thereof, have been most unreasonably enlarged, to wit: The Saratoga Telephone Company has been required to build its lines clear into the exchange switchboard and has further been burdened with expenses having to do with the conduct of the exchange service. The only concession granted them has been the use of a certain number of The Pacific Telephone and Telegraph Company's substation instruments.

The Saratoga Telephone Company has approximately 144 subscribers. Assuming that the subscribers take advantage of their privilege of paying their accounts within a specified time to secure a minimum rate (and the testimony indicates that they have generally done this), approximately 141 of that number pay a rate of \$1.25 per month and three pay a rate of \$1.50 per month; but the contracts involving the service are actually written with The Pacific Telephone and Telegraph Company, and of the rate paid, The Pacific Tele-

phone and Telegraph Company collects \$1.00 per month from each, the Saratoga Telephone Company being permitted to collect the remaining 25 cents or 50 cents, as the case may be. Out of the \$1.00 collected by The Pacific Telephone and Telegraph Company, it has allowed 25 per cent. as an agent's commission or a contribution toward making up a guaranteed salary for the operator operating the exchange board of \$50.00, involving, in the past, the necessity on the part of the Saratoga Telephone Company of making up the balance of the operator's salary which involved, as at July, 1912, a monthly expenditure of about \$14.00.

After making up guaranteed salary for the operator in the central exchange, the Saratoga Company was left approximately \$22.75 per month, out of which it further obligated itself to pay \$12.50 per month toward the operator's living quarters, leaving a balance of \$10.25 per month to cover operating, maintenance and other costs of the Saratoga Telephone Company.

The Saratoga Telephone Company now petitions this Commission for permission to raise its rates 25c. per month in order that additional revenue may be available with which to pay for an additional operator in the Saratoga exchange so that continuous service may be enjoyed.

The service which the Saratoga Telephone Company has had has been inclusive of certain free switching privileges with San Jose; this is a matter that will be discussed further on in this opinion. The Pacific Telephone and Telegraph Company has continuously professed to serve the territory in and about Saratoga. The testimony proves conclusively that years of unsatisfactory and unavailing negotiations have gone forward between this community and The Pacific Telephone and Telegraph Company in the effort to secure from that company some measure of compliance with its profession. The Pacific Telephone and Telegraph Company has on file with this Commission a rate sheet setting out the service which that company professes to give in this field. This rate sheet bears the date of October 15, 1907, and without reference to the controversy, the history of which was brought out in the testimony in this case antedating 1907, the rate

sheet of October 15th, 1907, being the effective rates of The Pacific Telephone and Telegraph Company at this point, defines the obligations of this company as a public utility in this community. The Pacific Telephone and Telegraph Company professes to render exchange service within an exchange radius of one mile from the central office at Saratoga. The schedule provides for:

#### BUSINESS SERVICE.

	Wall	Desk
Individual line, unlimited service...	\$2.50	\$2.50
Four-party, unlimited service.....	1.50	2.00
Extension Set .....	1.00	1.00

#### RESIDENCE SERVICE.

	Wall	Desk
Individual line, unlimited service...	\$2.50	\$2.50
Four-party, unlimited service.....	1.50	2.00
Extension Set .....	1.00	1.00

with the usual charges for mileage beyond the exchange radius for individual, two-party and four-party service; also for farmer line service, which is the service I have first referred to in this opinion, *i. e.*, a rural service under which the subscriber or subscribers build the line or lines, furnish their own instruments and receive exchange service at a nominal price, varying with the size of the exchange to which they are connected. In the case of Saratoga, the effective rate for this service would be 25c. per month, and at that rate the Saratoga subscribers to the Saratoga telephone system are entitled to all of the exchange service held out by The Pacific Telephone and Telegraph Company for Saratoga Exchange.

We find, as a fact, that The Pacific Telephone and Telegraph Company is giving no exchange service whatever in Saratoga other than is comprised by a single toll station in the office of its exchange; that it has, contrary to its professed policy under the rate sheet defining its responsibilities, either permitted, encouraged or forced the Saratoga Telephone Company not only to build up to the usual point designated for farmer lines, but that the Saratoga Telephone

Company has been compelled to build into the switchboard, and, as a result, such facilities as are in existence for handling business within the normal exchange radius are the property of the Saratoga Telephone Company. The Pacific Telephone and Telegraph Company has been and is now collecting from Saratoga subscribers, under individual contracts with them, the sum of \$1.00 per month, and whereas the Saratoga Telephone Company has filed rates ranging from \$1.25 to \$1.50 per month, as a matter of fact, these so-called rates are inclusive of the \$1.00 collected by The Pacific Telephone and Telegraph Company and the remaining 25c. or 50c. is collected by the Saratoga Telephone Company independently of the operations of The Pacific Telephone and Telegraph Company. The Pacific Telephone and Telegraph Company, as the company professing to give service at Saratoga, has permitted a situation to develop by which the operator in charge of this professed service has been and is being partially paid directly by the Saratoga Telephone Company. In addition to this unwarranted and unreasonable demand, condition or result, the situation has compelled the Saratoga Telephone Company to contribute \$12.50 per month to meet certain living quarter expenses having to do with the maintenance of the Saratoga telephone business of The Pacific Telephone and Telegraph Company, and, whereas a demand for twenty-four-hour service has normally developed, The Pacific Telephone and Telegraph Company has likewise included this necessity among the burdens to be met by its subscribers on the lines of the Saratoga Telephone Company, and, as a result, the Saratoga Telephone Company has felt it necessary to petition this Commission to raise its rates 25c per month in order that it might pay the additional wages necessary for an additional telephone operator to conduct the telephone business which The Pacific Telephone and Telegraph Company professes to give in and for the exchange of Saratoga.

I do not see my way clear to granting a raise in the rates of a company now paying from \$1.25 to \$1.50 per month for a service which they are normally entitled to for 25c. per month, in order that they may further increase the present



unreasonable charge to pay the wages of an operator to handle the normal business of The Pacific Telephone and Telegraph Company. I therefore recommend that the application of permission to increase telephone rates be denied.

The fact that the normal status of the Saratoga Telephone Company as a farmer line company includes the use of certain substation equipment, which, under normal conditions, they would have supplied and which are now the property of The Pacific Telephone and Telegraph Company, is not in and of itself of any particular consequence. It is a common thing for The Pacific Telephone and Telegraph Company, in so far as circumstances will permit, to withdraw its instruments under like conditions, but this is not always the case, under which circumstances it is a practice of that company to charge  $12\frac{1}{2}$  c. per month for the use of its substation equipment. For such subscribers, then, of the Saratoga Telephone Company as may be using instruments which are the property of The Pacific Telephone and Telegraph Company, a charge in accordance with usual practice, is a matter for private negotiations between such subscribers and The Pacific Telephone and Telegraph Company; otherwise, the Saratoga Telephone Company is entitled to full exchange service at Saratoga exchange rates for any and all subscribers on its lines. It is the duty of The Pacific Telephone and Telegraph Company to maintain and render exchange service such as it professes to render and as is defined by the rate sheet filed with this Commission. The fact remains that this rate sheet itself does not provide for several of the normal classes of telephone development, and for this reason I shall recommend that The Pacific Telephone and Telegraph Company complete its rate sheet by filing rates covering these classes of development.

A supplemental rate sheet likewise on file with this Commission and effective for Saratoga exchange concurrently with exchange rates is as follows:

"Saratoga subscribers are entitled to free switching to San Jose from Saratoga and free switching from San Jose to Saratoga, providing they make switches from San Jose central office.

"San Jose subscribers and non-subscribers pay rate of 5c. per switch for switches to Saratoga from San Jose."

This condition is a part of the Saratoga rates and is effective in the case of all subscribers regardless of classification. This condition covers a service that is normally a part of The Pacific Telephone and Telegraph Company's toll system, and, as such, is and will be subject to such change or possible elimination as may result from this Commission's final decision in the matter of an application now pending for approval of a general basic toll rate. Such other rates and conditions of service as have been referred to do not normally include this service. This factor in the situation is thus eliminated in so far as the present cause is concerned.

By its administration of the affairs of this exchange in the past, The Pacific Telephone and Telegraph Company has permitted the development of the unreasonable conditions which I have pointed out. That adjustment is now required is no reasonable excuse for depriving a community of such advantages as it may have won by continual effort and heavy outlay in the effort to secure a service which a public utility professes to give. One of the conditions in this exchange is the actual necessity for continuous service. It is the duty of The Pacific Telephone and Telegraph Company to do in fact the things which it professes to do and, in this instance, to meet those normal duties, responsibilities and expenses which it has been imposing on others.

I therefore submit the following form of order:

#### ORDER.

The Saratoga Telephone Company of Saratoga, Santa Clara County, California, having made application for permission to increase rates, and The Pacific Telephone and Telegraph Company having been formally made a party to these proceedings under an order to show cause, and a public hearing having been held thereon,

*It is hereby ordered*, That the application of the Saratoga Telephone Company be and the same is hereby denied;

*And be it further ordered,* That The Pacific Telephone and Telegraph Company forthwith render telephone service in and about Saratoga at the rates on file with this Commission; that it immediately file with this Commission rates covering those normal classes of telephone service which are now not provided for in its rate sheet on file with this Commission; and that it pay the entire expense of operating its exchange at Saratoga, including the wages of operators sufficient to maintain an adequate twenty-four hour service;

*And be it further ordered,* That if the Saratoga Telephone Company and The Pacific Telephone and Telegraph Company, cannot agree upon their service and business relations in and about Saratoga, they shall so notify this Commission within sixty days from the date of this order, whereupon this Commission will issue a supplemental order covering the subject.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of February, 1913.

## FLORIDA.

### Railroad Commissioners.

IN THE MATTER OF THE COMPLAINTS OF L. S. PETTIWAY AND  
E. A. ROBERTS AGAINST THE FLORIDA TELEPHONE COM-  
PANY.

File No. 3350.—Order No. 387.

*Decided January 28, 1913.*

#### Private Telephone Lines—One-way Service—Discrimination.

Upon investigation of complaints as to the refusal of the Florida Telephone Company to render other than one-way service to the complainants over the private telephone lines constructed and owned by them, the Commission found that the Company had permitted the complainants to connect their lines with its wires and had rendered them a one-way service for the same monthly rental which was charged subscribers to the local exchange, but had required subscribers calling the complainants to pay a toll for each message.

*Held:* That the refusal to render other than a one-way service to the complainants and the requirement that tolls should be charged for all messages from other subscribers to the complainants amounts to a discrimination against the complainants.

*Ordered,* That the Company discontinue the present arrangement and fix a reasonable flat rate for the service, either by agreement with the complainants or upon further application to the Commissioners.\*

#### ORDER.

After due and lawful notice in writing to The Florida Telephone Company, this matter came on before the Railroad Commissioners of the State of Florida for consideration on the 27th day of November, 1912, at ten o'clock in the morning, at the office of the said Commissioners, in the City of Tallahassee, and then and there appeared Mr. H. E. Voyle on behalf of the said Florida Telephone Company, who was fully heard; whereupon the further consideration of the said matter was, in pursuance of a written motion of the

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\*Editor's headnote.

petitioners, postponed until the 4th day of December, 1912, at which time the said Commissioners entered upon the further consideration of the said matter and heard in behalf of the petitioners Messrs. L. S. Pettiway and E. A. Roberts and their counsel, Hon. Fred. L. Stringer; whereupon the said matter was taken under advisement.

And now this 28th day of January, 1913, the said matter coming on for further consideration, the said Railroad Commissioners of the State of Florida do find that the said Florida Telephone Company maintains, owns and operates a telephone exchange in the town of Brooksville, Florida, through which the said Company renders telephone service to various subscribers in and around the said town of Brooksville, and that the said Pettiway and the said Roberts have heretofore constructed private telephone lines from their places of business located respectively twelve miles and twenty miles and sixteen miles from the said town of Brooksville; and that by an arrangement heretofore made and entered into by and between the said Florida Telephone Company and the said L. S. Pettiway, and a like arrangement between the said Florida Telephone Company and the said E. A. Roberts, the said Pettiway and said Roberts have been permitted to connect their private telephone lines to the wires of the said Florida Telephone Company; and that under the terms of the said arrangements the said Pettiway and the said Roberts have received of and from the said Florida Telephone Company certain telephone services for which the said Pettiway and the said Roberts have been required to pay the same monthly rental as subscribers in the said town of Brooksville, but that for the said compensation the Florida Telephone Company has rendered to the said Pettiway and the said Roberts only one-way service, and has required as additional compensation for the service rendered, that subscribers calling either the said Pettiway or the said Roberts should pay toll for each message.

And the said Commissioners do further find that the services so rendered by the said Florida Telephone Company was a voluntary service.

And the said Railroad Commissioners do consider and adjudge that under the circumstances brought out in this case the refusal of the said Florida Telephone Company to render other than one-way service for the said Pettiway and the said Roberts, and the requirement of the said Company that tolls should be charged for all telephone messages and calls from other subscribers to the said Roberts and the said Pettiway, amounts to a discrimination against the said Roberts and the said Pettiway,

*Wherefore, it is ordered and adjudged* by the said Railroad Commissioners of the State of Florida that the said Florida Telephone Company shall cease and desist from requiring that the services so rendered to the said Pettiway and the said Roberts shall be rendered as a one-way service, and shall cease and desist from charging tolls for service rendered over the lines of the said Roberts and the said Pettiway, and the said Florida Telephone Company shall fix a reasonable flat rate for the said service which rate may be fixed by agreement between said parties, or if necessary, upon further application to said Commissioners.

*Done and ordered* by the Railroad Commissioners of the State of Florida, in open session, at their office in the City of Tallahassee, this 28th day of January, A. D. 1913.

## **MISSOURI.**

### **St. Joseph Public Utilities Commission.**

**IN THE MATTER OF THE APPLICATION OF THE HOME TELEPHONE COMPANY OF ST. JOSEPH FOR PERMISSION TO SELL ITS PROPERTY TO THE MISSOURI AND KANSAS TELEPHONE COMPANY, ETC.**

*Decided December 9, 1912.*

### **Consolidation—Ordinance Fixing Rates.**

Upon application for authority to sell to The Missouri and Kansas Telephone Company all the property of the Home Telephone Company of St. Joseph, except its franchise, and to consolidate this property with the former company's exchange and asking further that the Commission fix the rates to be charged, the Commission found that the proposed sale and consolidation, upon the terms set forth in an ordinance of the city of St. Joseph relating thereto, were for the best interests of the telephone users and the public generally of the city, and that the rates prescribed in the ordinance were reasonable and just.

An order was thereupon issued authorizing the sale upon the terms set forth in the ordinance and establishing the rates prescribed by the ordinance as the legal rates.\*

## **ORDER.**

Now on this 9th day of December, 1912, comes the Home Telephone Company of St. Joseph and moves, asks and requests the Commission for its authority and consent, under Section 8812 of the revised statutes of Missouri, 1909, to sell and convey its property (except its franchise) to The Missouri and Kansas Telephone Company and comes The Missouri and Kansas Telephone Company and asks permission to purchase the same and to unite the same with its own exchange, and further requests the Commission to fix the rates to be charged for service through said consolidated exchange and pending said consolidation; and the said Public Utilities Commission having heard said application and the

\*Editor's headnote.

evidence and the arguments in support thereof and being fully advised in the premises;

Finds that said sale, purchase and consolidation, upon the terms and conditions set forth in the ordinance relating to the same, passed by the Common Council of the city of St. Joseph December 2, 1912, are for the best interests of the telephone users and the public generally of the city of St. Joseph, and that the rates fixed and prescribed in said ordinance are reasonable and just, and that the said applications of the said telephone companies are in the public interest and ought to be granted.

*It is therefore by the Commission ordered:* That the Home Telephone Company of St. Joseph is hereby permitted to sell and convey to The Missouri and Kansas Telephone Company, all of its property, real, personal and mixed (except franchise), and The Missouri and Kansas Telephone Company is permitted to purchase the same on the terms and conditions set forth in said ordinance of December 2, 1912; and the rates and charges for service set forth and prescribed in said ordinance are hereby fixed and established by this Commission as the legal rates and charges to be in force and effect from and after the acceptance of the terms of said ordinance by said telephone companies in the manner and within the time in said ordinance prescribed.

#### SPECIAL ORDINANCE NO. 6259.

AN ORDINANCE permitting the Home Telephone Company of St. Joseph to sell its property to The Missouri and Kansas Telephone Company, and permitting The Missouri and Kansas Telephone Company to purchase the said property and to consolidate and operate the same with its present property; and providing the terms, limitations and conditions of such consent, sale, purchase and operation, and repealing Special Ordinance No. 1682, entitled "An Ordinance granting to A. B. Snowden and M. M. Riggs the right to construct and operate lines of telephone and telephone exchange in the City of St. Joseph, Missouri."

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF ST. JOSEPH AS FOLLOWS:



SECTION 1. The Home Telephone Company of St. Joseph is hereby permitted to sell and convey to the Missouri & Kansas Telephone Company all of its property, real, personal and mixed (except the franchise granted by the City of St. Joseph to A. B. Snowden and M. M. Riggs and now held and owned by the said Home Telephone Company of St. Joseph, being franchise granted by Special Ordinance No. 1682); and said Missouri and Kansas Telephone Company is hereby permitted to purchase, hold and operate said property; Provided, that by the exercise of the permission and consent to sell and convey and to purchase, hereby granted, said Home Telephone Company of St. Joseph agrees to surrender and surrenders all of its franchises and rights to occupy the streets, alleys and public places in the City of St. Joseph, and to operate a telephone exchange therein; and said Missouri and Kansas Telephone Company shall neither by said purchase nor by this ordinance, acquire the said franchises and rights, but shall hold and operate said property so acquired under the same rights as those under which it now operates its own property and not otherwise; said property so purchased to have the same legal status as the present property of said Missouri and Kansas Telephone Company, subject to the same burdens and obligations and enjoying the same rights, unless otherwise provided herein.

SECTION 2. Said Missouri and Kansas Telephone Company shall within six months after this ordinance shall take effect and be in force, unite the St. Joseph exchange of said Home Telephone Company of St. Joseph with its own exchange in St. Joseph, in such manner that all persons then entitled to service from either exchange shall be enabled to obtain service from said consolidated exchange.

SECTION 3. Until the first day of July, 1918, the maximum charges or rates for telephone service furnished by such consolidated exchange shall be as follows:

For two-party residence telephones . . . . .	\$24.00 per annum
For single line residence telephones . . . . .	\$30.00 per annum
For two-party business telephones . . . . .	\$48.00 per annum
For single line business telephones . . . . .	\$60.00 per annum
For business extensions . . . . .	\$ 1.00 per month

For residence extensions (desk set) .....	\$ 1.00 per month
For residence extensions (wall set with bell) .....	\$ .65 per month
Moving charge (within room or style of instrument changed) .....	\$1.00
Moving charge (within building) .....	\$1.50
Moving charge (outside of building) .....	\$2.50

No charge will be made for removing a telephone from one location to another, provided it has been used for a period of twelve consecutive months at the same location. No charge is made when the move is caused by fire or when the subscriber signs a new contract for a higher grade of service at the new location. No charge will be made where subscriber moves to location at which telephone is already installed.

Any sort of service not above enumerated shall be charged for according to the schedule of charges now on file with the Utilities Commission.

After the first day of July, 1918, the rates for telephone service shall be such as shall from time to time be lawfully fixed by the Utilities Commission of the City of St. Joseph or any corresponding body which shall from time to time have jurisdiction over such rates.

**SECTION 4.** In addition to the free and reduced service which the said Missouri and Kansas Telephone Company is now obligated to give under its franchise, said Company shall furnish to said city through said consolidated exchange, free of charge, one telephone each (with the service therefor) for the mayor, the city treasurer, the city engineer, the city counsellor, the city clerk, and the chief of police.

**SECTION 5.** In consideration of the passage of this ordinance said Missouri and Kansas Telephone Company agrees to pay to the City of St. Joseph in lieu and in place of all licenses, rentals, occupation taxes, pole, wire or conduit taxes, and in lieu and in place of all licenses, imposts or exactions of the kind and character aforesaid, which are now levied, imposed, exacted or claimed, or which may hereafter be levied, imposed, exacted or claimed, other than the regular and valorem property tax, an amount equal to 2 per

cent. of its annual gross rental receipts collected by it for telephones rented and installed within the present or future corporate limits of the City of St. Joseph. Said sum shall be paid in two equal semi-annual installments to be made on the 10th day of January and July of each year covering the receipts for the six months prior to the making of each of the said payments. Said payments shall be made on the sworn statement of the then acting secretary or treasurer of said company filed with the City Comptroller of said city, and said City Comptroller, or any committee of the common council appointed for that purpose, shall have a right to verify the correctness of any statement so filed and correct the same if erroneous. Payment shall then be made upon the corrected statement.

SECTION 6. Said Missouri and Kansas Telephone Company shall be required to extend their service within the corporate limits of the City of St. Joseph as the common council shall direct.

SECTION 7. Special Ordinance No. 1682, entitled "An Ordinance granting to A. B. Snowden and M. M. Riggs the right to construct and operate lines of telephone and telephone exchange in the City of St. Joseph, Missouri," approved December 21st, 1893, is hereby repealed.

SECTION 8. Said Missouri and Kansas Telephone Company shall be required to comply, if it can lawfully do so, with the terms and conditions of all contracts in regard to toll lines for sending or receiving toll messages which the Home Telephone Company of the City of St. Joseph or the St. Joseph Home Long Distance Telephone Company may now have with telephone companies or telephone exchanges: Provided this section shall not be construed to require the Missouri and Kansas Telephone Company to give all or any of its business exclusively to any exchange with which the said Home Telephone Company or Long Distance Company may have contracts as aforesaid.

SECTION 9. All ordinances and parts of ordinances in conflict herewith are, in so far and in so far only, as they do so conflict, hereby repealed.

**SECTION 10.** This ordinance shall take effect and be in force upon the filing by the Home Telephone Company of St. Joseph and the said Missouri and Kansas Telephone Company of their acceptance of the terms hereof, within sixty days after the passage and approval of this ordinance.

**SECTION 11.** Until the exchanges of the Home Telephone Company of St. Joseph and of the Missouri and Kansas Telephone Company are united into one exchange as herein provided, and no longer, the said two exchanges may be operated by the Missouri and Kansas Telephone Company as separate exchanges at the rates now being charged by each.

Passed December 2, 1912.

J. W. HOLTMAN, President Common Council.

Approved December 2, 1912.

CHAS. A. PFEIFFER, Mayor.

**TO THE HONORABLE, THE MAYOR AND COMMON COUNCIL OF THE CITY OF ST. JOSEPH, MISSOURI:**

The undersigned, The Missouri and Kansas Telephone Company, a corporation of the State of Missouri, hereby accepts the ordinance passed by the City of St. Joseph, on the second day of December, 1912, entitled:

“An ordinance permitting the Home Telephone Company of St. Joseph to sell its property to The Missouri and Kansas Telephone Company, and permitting the Missouri and Kansas Telephone Company to purchase the said property and to consolidate and operate the same with its present property; and providing the terms, limitations and conditions of such consent, sale, purchase and operation and repealing Special Ordinance No. 1682 entitled ‘An Ordinance granting to A. B. Snowden and M. M. Riggs the right to construct and operate lines of telephone and telephone exchange in the City of St. Joseph, Missouri.’”

and all of the terms thereof.

This is intended to be the acceptance required from this Company by Section 10 of said Ordinance.

Dated St. Joseph, Missouri, December 9th, 1912.

MISSOURI AND KANSAS TELEPHONE COMPANY.

By E. D. NIMS, *Vice-President.*

TO THE HONORABLE, THE MAYOR AND COMMON COUNCIL OF THE CITY OF ST. JOSEPH, MISSOURI:

The undersigned, the Home Telephone Company, St. Joseph, Missouri, hereby accepts the ordinance passed by the City of St. Joseph, on the second day of December, 1912, entitled:

“An ordinance permitting the Home Telephone Company of St. Joseph to sell its property to The Missouri and Kansas Telephone Company, and permitting The Missouri and Kansas Telephone Company to purchase the said property and to consolidate and operate the same with its present property; and providing the terms, limitations and conditions of such consent, sale, purchase and operation, and repealing Special Ordinance No. 1682, entitled ‘An Ordinance granting to A. B. Snowden and M. M. Riggs the right to construct and operate lines of telephone and telephone exchange in the City of St. Joseph, Missouri.’ ”

and all of the terms thereof.

This is intended to be the acceptance required from this Company by Section 10 of said Ordinance.

Dated St. Joseph, Missouri, December 9th, 1912.

HOME TELEPHONE COMPANY, ST. JOSEPH, MISSOURI.

By THEODORE GARY, *President.*

## **NEBRASKA.**

### **State Railway Commission.**

#### **Free and Reduced Rate Service—Discount for Payment in Advance.**

The Commission approved the discontinuance of a discount of \$6.00 per annum to farm line subscribers who paid for three years' service in advance, for the reasons that the discount was so large as to amount to a discrimination and that the law was violated by the manner in which the discount had been paid in the past, payments frequently covering one year in arrears and two years in advance. The Commission permitted the Company to continue to serve those subscribers who had already made payments in advance under this system, until the termination of the periods for which they had paid.\*

#### **MINUTES OF THE COMMISSION.**

*Dated November 25, 1912.*

Accompanied by a letter under date of Nov. 1st, Mr. G. E. McFarland, V. P. and G. M. of the Nebraska Telephone Company, submitted for the approval of the Commission exchange rate schedules covering the exchanges at Belgrade, Cedar Rapids, Primrose and Spalding, formerly owned by the Belgrade Telephone & Improvement Company, but now the property of the Nebraska Telephone Company. The old schedules applicable to the above exchanges carried a farm line provision permitting of a discount of \$6.00 per annum by payment of three years in advance. The new schedules provided for the elimination of this feature. Under date of Nov. 16th, Mr. G. H. Pratt, Commercial Supt. of the Nebraska Telephone Company, wrote to the Commission, submitting additional data with reference to the application of this \$6.00 per year discount, and calling attention to the difficulties involved in connection with the enforcement of the rate. The Commission gave consideration to the ques-

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\*Editor's headnote.

tions as thus raised, and gave its sanction to the omission from the new schedules of the farm line discount of \$6.00 per annum, for the reason that the discount is so large as to amount to discrimination, and for the further reason that the manner in which this discount has been paid in the past, payments frequently covering one year in arrears and two years in advance, amounts to violation of the law. The Commission also gave its approval to the request of Mr. Pratt, that the company be permitted to continue to serve those subscribers who have paid their money in advance under the three years' discount system, until the termination of the period for which they have paid, no further discounts of that character to be made after this date.

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**Approval of Rules Governing Extensions of and Connections with Rural Lines.**

**MINUTES OF THE COMMISSION.**

*Dated December 26, 1912.*

The Sutton Telephone Company brought to the consideration of the Commission the following rules, applicable to service over its rural lines, and asked for their approval and for the filing of same in connection with the rate schedules of said company:

1. Any person desiring a connection with the rural lines of this Company, and the place where said telephone is to be located is one-half mile or more from any established line of this Company, such person shall pay or cause to be secured to this Company, an amount equal to the costs of extending said line and installing said 'phone, the said amount to be as advanced rental of said 'phone, according to the established rates of this company.

2. No person shall be entitled to a connection with any established rural line of this Company, or any rural line hereafter to be built and established, when said line shall have to exceed fifteen 'phones thereon. Provided, however, that if application is made, another line will be installed, provided five or more applicants shall have applied for connection thereto."

And it appearing to the Commission upon due investigation and consideration, that the rules above set forth are reasonable and warranted by existing conditions, they were upon motion approved, subject to complaint, and it was directed that they be filed with the rate schedules of the said Sutton Telephone Company.

**Approval of Rules Governing Switching of Independent Rural Lines.**

MINUTES OF THE COMMISSION.

*Dated December 26, 1912.*

The Ainsworth Telephone Company presented the following rules for the consideration of the Commission, and asked that they be approved and made a part of the exchange rate filings of said company. The rules follow:

*"Rules governing the switching of independent rural lines,*

This company shall be notified at once, upon the installation of a new 'phone upon such lines as do not belong to this exchange.

All switching fees are due six months in advance, and shall be collected by the proper officers, and paid to the Ainsworth Telephone Company within thirty days from date due. In case such switching fees are not paid within the stated time, the Manager of the Ainsworth Telephone Company shall be authorized to refuse connections to the entire line.

All toll charges shall be assessed to the proper officer of such a company and shall be paid to the Ainsworth Telephone Company, settlement to be made every thirty days. In case tolls are not settled when due, the operator of this company shall be authorized to refuse all toll calls from the entire line.

Any independent line connecting with this system shall be responsible for the conduct of their respective subscribers seeing that they comply with the rules of the Ainsworth Telephone Company."

After due investigation and consideration, the Commission gave its approval to said rules, subject to complaint, and ordered that they be added to the exchange rate filings of the said Ainsworth Telephone Company.



## CONFERENCE RULINGS.

## MINUTES OF THE COMMISSION.

*Dated December 30, 1912.*

84. CONNECTIONS ON FARM LINES.—(Informal Complaint No. 2630). Where a party desires 'phone connection with an established farm line and the company giving service has reasonable grounds for doubt as to such connection being retained a sufficient length of time to justify the construction of the connecting line, the company can reasonably require the patron to pay, or guarantee, the cost of necessary line extension and 'phone installation, the amount so advanced to be credited to patron as advance payment of 'phone rental at the established rates of the serving company.

85. OVERLOADED FARM LINES.—(Informal Complaint No. 2630). The Commission holds that ten 'phones upon a single farm line is the ordinary limit of efficient service, but that in extreme cases, or for sufficient reasons, the limit may be extended to fifteen 'phones. Where a greater number than fifteen 'phones is being served on one line and complaint is made of inefficient service on that account, the operating company will be required to show cause why a remedy should not be applied.

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IN THE MATTER OF THE COMPLAINT OF THE POSTAL TELEGRAPH-CABLE COMPANY AGAINST THE NEBRASKA TELEPHONE COMPANY AND THE LINCOLN TELEPHONE AND TELEGRAPH COMPANY.

Informal Complaint No. 2662.

*Decided January 2, 1913.*

**Call Words For Telegraph Companies—Discrimination.**

Upon complaint by the Postal Telegraph-Cable Company that certain practices of the Nebraska Telephone Company and the Lincoln Telephone and Telegraph Company were discriminatory as against the complainant and in favor of The Western Union Telegraph Company, the Commission found that the word "telegram" was used as a call word for The Western Union Telegraph Company, exclusively, and that the Postal Telegraph-Cable Company could be called only by the use of the usual number or by

the word "Postal", and held that this practice was unjust, unreasonable and discriminatory as against the Postal Telegraph-Cable Company.

The Commission ordered the defendants:

1. To discontinue the use of the word "telegram" as a call word for The Western Union Telegraph Company or for any other telegraph company within the State.

2. To assign to the Postal Telegraph-Cable Company and to The Western Union Telegraph Company, in addition to the usual call numbers, the call words "Postal" and "Western Union" respectively.

3. To print these call words in their directories with a sufficient explanation of the use thereof.

4. To establish a rule that no operator shall recognize the word "telegram" as a call word and that the operator shall require any person calling in this manner to use the proper call word.

5. To establish a rule that no employee shall be permitted to designate, direct or advise which telegraph company shall be called, provided that where the exchange has direct connection with but one of said companies, the operator may so advise the person calling, giving the name of the company.\*

### ORDER.

**CLARKE, Commissioner:**

Informal complaint having been made by the Postal Telegraph-Cable Company against the Nebraska Telephone Company and the Lincoln Telephone & Telegraph Company, that certain of their practices were unjust, unreasonable and discriminatory as against complainant and in favor of its competitor, The Western Union Telegraph Company, the Commission caused an investigation to be made, from which it appears;

That the defendants are engaged in rendering telephone service throughout the state of Nebraska; that the Postal Telegraph-Cable Company and The Western Union Telegraph Company are engaged in furnishing telegraph service in this state; that the Nebraska Telephone Company in its directories, and the Lincoln Telephone & Telegraph Company in the directories of the certain exchanges purchased by it from the Nebraska Telephone Company and now operated by it, have assigned the word "telegram" as a call word; that subscribers and patrons of the said telephone companies, upon giving the word "telegram", are connected with the nearest office of The Western Union Telegraph Company; that the

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\*Editor's headnote.

use of such word "telegram" as a call word is confined to calls designed for The Western Union Telegraph Company, and that the Postal Telegraph-Cable Company can be called only by the use of the usual number given in the directory, or by the word "Postal"; that frequently telephone patrons calling the Postal Telegraph-Cable Company are connected with The Western Union Telegraph Company or with "information".

The Commission is satisfied, from its investigation, that the use of said word "telegram" as a call word for The Western Union Telegraph Company, is unjust, unreasonable and discriminatory as against the Postal Telegraph-Cable Company.

*It is therefore ordered* by the Nebraska State Railway Commission:

FIRST. That the said Nebraska Telephone Company, and the Lincoln Telephone & Telegraph Company be, and the same are, hereby required to discontinue the use of the word "telegram" as a call word for The Western Union Telegraph Company, or for any other telegraph company within this state.

SECOND. That said Nebraska Telephone Company and the Lincoln Telephone & Telegraph Company be, and the same are, hereby directed and required to assign to the Postal Telegraph-Cable Company and Western Union Telegraph Company call numbers as is usual with other subscribers to their service, and that in addition thereto the word "Postal" be assigned as a call word for the Postal Telegraph-Cable Company, and the words "Western Union" be assigned as a call word for The Western Union Telegraph Company.

THIRD. That said call word for each company respectively, be printed in the subscribers' directories of said telephone companies hereafter issued, in such manner and with such explanation as to show clearly that a person desiring to send a telegram over the lines of the Postal Telegraph-Cable Company may call said company by the use of the single word "Postal", and that a person desiring to send a telegram over the lines of The Western Union Telegraph Company may call said company by the use of the words "Western Union".

**FOURTH.** That said Nebraska Telephone Company and the Lincoln Telephone & Telegraph Company be, and the same are, hereby required to make a rule for the government of its switchboard operators that in no case shall the word "telegram" be recognized as a call word, and that if such word be used the operator shall at once inform the person calling that it is not recognized as a call and that such operators shall thereupon require the person calling to use a proper call word.

**FIFTH.** That in no case of call for telegraph connection shall any employee or switchboard operator of said Nebraska Telephone Company or Lincoln Telephone & Telegraph Company be permitted or allowed to designate, direct or advise which telegraph company shall be called for the purpose of sending a telegram, subject, however, to the provision that where the exchange has direct connection with but one of said companies, the operator may advise the person calling what company is connected with that particular exchange, and the said Nebraska Telephone Company and Lincoln Telephone & Telegraph Company shall be and hereby are required to institute a proper rule to that effect for the government of its employees and switchboard operators.

**SIXTH.** That this order shall be effective the 10th day of February, 1913.

**SEVENTH.** That the said Nebraska Telephone Company and the Lincoln Telephone & Telegraph Company be and the same are hereby required to notify the Commission on or before the 20th day of January, 1913, whether the terms of this order are accepted and will be obeyed, or appear at the office of the Commission at 9:00 o'clock a. m. on the 25th day of January, 1913, and show cause why the terms of the order should not be obeyed.

Made and entered at Lincoln, Nebraska, this 2nd day of January, A. D. 1913.

IN THE MATTER OF THE APPLICATION OF THE GARFIELD MUTUAL  
TELEPHONE ASSOCIATION FOR THE VALIDATION OF ITS  
STOCK IN THE AMOUNT OF \$60.00 AND FOR AUTHORITY TO  
ISSUE ADDITIONAL STOCK IN THE AMOUNT OF \$40.00.

Application No. 1647.

*Decided January 14, 1913.*

Validation of Unauthorized Stock Issue.

ORDER.

*Whereas*, the Garfield Mutual Telephone Association of Burwell, Nebraska, had made application to the Nebraska State Railway Commission for the validation of its stock in the amount of \$60, which stock was inadvertently issued without knowledge of the law, and also for authority to issue its additional stock in the amount of \$40, the proceeds of the unauthorized stock having been used for the purchase and installation of new 'phones and building new lines, and the proceeds of the sale of the proposed new stock to be devoted to the same purpose, and it appearing to the Commission upon due investigation and consideration that the application is reasonable and warranted by existing conditions,

*It is ordered* by the Nebraska State Railway Commission that the desired authority be and the same is hereby granted, the Garfield Mutual Telephone Association to make report to this Commission of the sale of the stock as above authorized and the disposition of the proceeds, at such time as said stock shall have been sold and the proceeds expended.

Made and entered at Lincoln, Nebraska, this 14th day of January, 1913.

## NEW HAMPSHIRE.

### Public Service Commission.

#### PETITION OF NEW ENGLAND TELEPHONE & TELEGRAPH COMPANY FOR AUTHORITY TO ISSUE BONDS.

D-97.

*Decided December 13, 1912.*

#### Authorization of Bonds—Bond Discount.

Upon petition of the New England Telephone & Telegraph Company for permission to issue 5 per cent. debenture bonds to the amount of \$1,000,000 at 97 per cent. of the par value thereof, it appeared that expenditures for permanent additions and improvements had been made to the amount of \$694,414.92 and that further additions and improvements were contemplated involving an expenditure of \$924,492.

*Held:* That the expenditures made and contemplated were or are necessary to enable the petitioner to meet the reasonable demands of the public for telephone service and consequently are for the public good; that these expenditures cover only new construction or additions to the plant and facilities of the petitioner which have not been covered by any previous issue of stock or bonds and that consequently, their capitalization in some form should be permitted.

That, although the statute does not explicitly give the Commission any control over the price at which bonds shall be issued, nevertheless, since the amount of bonds reasonably requisite to raise the money needed for any given purpose depends obviously not only upon the amount of money needed for that purpose, but also upon the price at which the bonds ought fairly to sell, the Commission must consider the price at which it is proposed to sell bonds to be authorized. It would seem that the Commission may grant authority to issue bonds at not less than a price fixed, and that securities found by the Commission to be requisite for a given purpose may not be issued at such a price as to yield proceeds inadequate for that purpose. The price at which it is proposed to issue the bonds herein authorized is not less than the price at which similar bonds bearing the same rate of interest have recently been sold by this and other similar corporations. At the proposed price, the bonds will yield the investor approximately  $5\frac{1}{4}$  per cent. They are not secured by mortgage, being in legal effect nothing more than notes of the issuing corporation. Considering the nature of the security, the rate of interest and all other circumstances affecting a sale of such securities at this time, the Commission is not prepared to say that the proposed price is so low as to be inconsistent with the public interest.\*

**Appearances:** for the petitioner, *Matt B. Jones.*

\*Editor's headnote.

## REPORT.

This is a petition of the New England Telephone & Telegraph Company praying for the permission of this commission to issue and sell one thousand five per cent. debenture bonds of the par value of \$1,000 each, at not less than \$970 for each bond so issued and sold.

A hearing was held at Concord, December 9, 1912. It appears to our satisfaction, from the evidence offered, that the petitioner since January 1, 1910, has expended for permanent additions and improvements to its telephone properties in New Hampshire, for central office equipment, \$71,041.07; for sub-station equipment, \$106,789.80; for extension and improvement of exchange lines, \$352,672.50; for toll lines, \$163,911.35, a total of \$694,414.92.

The evidence also shows that the petitioner desires in the immediate future to make further additions and improvements to its said telephone properties, as follows: an extension of its office building in Manchester, at an estimated expense of \$40,000; additional central office equipment at its various exchanges throughout the state, at an estimated expense of \$30,722; additional sub-station equipment, at an estimated expense of \$21,852; extension and improvement of exchange lines at an estimated expense of \$93,923; of its toll lines, at an estimated expense of \$137,995; making the total estimated expense for contemplated improvements and extensions, \$924,492.

The petitioner operates telephone properties over a large portion of the state. The expenditures, both those made and those contemplated, were proved with great detail, the exact amount at each exchange and upon each toll line being shown, and the purpose of such expenditures. No useful purpose will be served by including that detail in this report. We are satisfied by the evidence offered that all of said expenditures, both those made and those contemplated, were or are necessary to enable the petitioner to meet the reasonable demands of the public for telephone service, and consequently, for the public good. We are also satisfied that they cover only new construction or additions to the plant

and facilities of the petitioner, and that they have not been covered by any other previous issue of stock or bonds. Their present capitalization in some form should accordingly be permitted.

The petitioner prays for authority to make its proposed issue of bonds at 3% less than par. Prior to the passage of the act creating this commission, there was no restriction upon the issuance of stocks or bonds by utilities. By section 14 of said act, all of such issues were placed under the control of this commission.

Paragraph (a) of said section provides that no railroad corporation or public utility shall issue any stock, bonds, notes, or other evidence of indebtedness payable more than one year after date, without authority from this commission, with the exception that public utilities shall be required to apply for such authority to issue only "when the proceeds are to be used for the acquisition of property, the construction, completion, extension or improvement of its facilities, or the improvement or maintenance of its service within this state, or the discharge or refunding of its obligations or reimbursement of moneys actually expended for such purposes." Paragraph (c) of said section, provides that when any railroad corporation or public utility shall increase its capital stock, it shall offer the new shares proportionally to its stockholders at such price *not less than par* as shall have been determined by vote of the stockholders. Said section further provides that "The determination by the commission of the amount of stock reasonably requisite for the purpose for which the issue is made, shall be based upon the price at which such stock is to be offered to stockholders as fixed by the vote of the stockholders; provided, however, that the commission shall refuse to authorize any particular issue of stock if in its opinion the price fixed by the stockholders is so low as to be inconsistent with public interests."

Paragraph (d) of said section provides that if a proposed increase in capital stock does not exceed 4% of the existing capital stock, it may be sold by auction without previous offer to the stockholders, and that in such case, or when stock has been offered to stockholders but not subscribed for, it



shall be sold at auction at not less than par to be actually paid in cash.

Paragraph (e) of said section, provides that a public utility may "upon such terms as the commission may approve," issue its stock or bonds in payment for property.

It will thus be seen that while the statute forbids the issuance of stock at less than par, it does not forbid the issuance of bonds. The statute does not even in explicit terms give to the commission any control over the price at which bonds shall be issued, yet by implication it clearly does. By said paragraph (a) it is provided that no bonds shall be issued till the commission shall have determined the amount "reasonably requisite for the purpose for which the issue is to be made," and by paragraph (e) the right to issue bonds in payment for property is granted only "upon such terms as the commission may approve." The main purpose of the legislature would appear to have been to place a check upon the issuance of stock or bonds so that no greater amount of either than in any case is "reasonably requisite" shall be issued.

Since the amount of bonds reasonably requisite to raise money needed for any given purpose depends obviously not only upon the amount of money needed for that purpose, but upon the price at which the bonds fairly ought to sell, the commission must consider, in each case where authority to issue bonds is asked, the price at which it is proposed to sell the same. Only in this way may it determine whether the amount proposed to be issued is "reasonably requisite" for the purpose of raising the money proposed to be raised. It would seem also that it may grant authority to issue bonds for not less than a price fixed, so that the intent of the statute may be effected, and obligations found by the commission to be requisite for a given purpose may not be issued at such a price as to yield proceeds inadequate for that purpose.

Accordingly, we have felt it necessary to consider the price at which it is proposed to issue the bonds which we are here asked to authorize. It appears from the evidence that it is not less than the price at which other similar bonds bearing the same rate of interest have recently been sold by this and

other similar corporations. At the proposed price, the bonds will yield the investor approximately  $5\frac{1}{4}\%$ . They are unsecured by mortgage, being in legal effect nothing more than notes of the issuing corporation. Considering the nature of the security offered, the rate of interest proposed to be paid, and all the other circumstances affecting a sale of such securities at this time, we are not prepared to say that the proposed price is so low as to be inconsistent with the public interest.

An order will accordingly issue as prayed for.

Filed December 13, 1912.

## **NEW YORK.**

### **Public Service Commission—Second District.**

#### **IN THE MATTER OF A UNIFORM SYSTEM OF ACCOUNTS FOR TELEPHONE CORPORATIONS.**

*Decided January 21, 1913.*

#### **Uniform System of Accounts—Adoption of System Prescribed by the Interstate Commerce Commission.**

The Commission found that the Uniform System of Accounts prescribed for telephone companies by the Interstate Commerce Commission by its order of December 10, 1912, agreed in its fundamental principles with the Commission's own system prescribed by its order of November 13, 1911, although differing slightly in the matter of accounting nomenclature and arrangement, and held it to be desirable that both Commissions should have a system of accounts in substantial agreement. To the end that telephone corporations coming under the jurisdiction of both Commissions might not be required to maintain two sets of books or records covering the same matters, the Commission adopted this resolution prescribing the Interstate Commerce Commission's system of accounts, with certain specified modifications, for the use of all telephone corporations in the State of New York having annual operating revenues exceeding \$50,000.00.\*

### **RESOLUTION.**

This Commission by its order dated November 13, 1911, prescribed a Uniform System of Accounts for all telephone corporations coming within its jurisdiction. By virtue of an Act of Congress, the Interstate Commerce Commission also has jurisdiction over all telephone corporations engaged in interstate commerce in the United States, and has by its order of December 10, 1912, prescribed a Uniform System of Accounts for all such corporations which come under its jurisdiction and which have annual operating revenues exceeding \$50,000 per annum. In fundamental principles the Uniform System of Accounts prescribed by the Interstate Commerce Commission is in agreement with that issued by

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\*Editor's headnote.

this Commission, but differs slightly in the matter of accounting nomenclature and arrangement; and it is held to be desirable that both commissions shall have a system of accounts in substantial agreement, to the end that corporations coming under the jurisdiction of both commissions may not be embarrassed or required to maintain two sets of books or records covering the same matter; therefore it is

*Resolved, first*, that the Uniform System of Accounts for Telephone Corporations prescribed by the Interstate Commerce Commission, with the modifications hereinafter set forth, is hereby prescribed for the use of all telephone corporations in the State of New York having annual operating revenues exceeding \$50,000 in the keeping and recording of their accounts, and that January 1, 1913, is hereby fixed as the date on and after which the accounts shall be kept in conformity with that order, and that a copy of said Uniform System of Accounts and this order be served upon each such corporation in this State;

*Second*, that telephone corporations which have established accounts for fixed capital in conformity with the classification set forth for corporations in Classes A and B in the Uniform System of Accounts prescribed by this Commission on November 13, 1911, shall continue such accounts in the same detail established by that order, the continuation of which detail is provided for in the order of the Interstate Commerce Commission in a note following Account 101 on page 36 of that order;

*Third*, that the order of this Commission as set forth in paragraph 7 of page 10 of its order of November 13, 1911, relating to filing special reports in respect of telephone plants purchased of other telephone corporations, is continued in force and effect;

*Fourth*, that the order of this Commission dated November 13, 1911, is hereby amended in respect of the classification of telephone corporations shown on page 7, of that order, so that all telephone corporations under the jurisdiction of this Commission and having operating revenues not exceeding \$50,000 shall be known as Class C corporations; and said order, in so far as it relates to Class C corporations, is hereby

continued in force and effect for all telephone corporations hereby classified as Class C corporations.

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**IN THE MATTER OF THE COMPLAINT OF THE POSTAL TELEGRAPH-CABLE COMPANY AGAINST THE WESTERN UNION TELEGRAPH COMPANY AS TO CERTAIN RATES CHARGED THE POSTAL TELEGRAPH-CABLE COMPANY UPON TELEGRAPHIC MESSAGES TRANSFERRED TO THE WESTERN UNION TELEGRAPH COMPANY BY THE POSTAL TELEGRAPH-CABLE COMPANY.**

**Case 2768.**

*Decided January 29, 1913.*

**Telegraph Rates—Discrimination—Messages Transferred by the Postal Telegraph-Cable Company.**

Upon complaint by the Postal Telegraph-Cable Company, with respect to the charges made by The Western Union Telegraph Company for messages received by the complainant and transferred to the respondent to be forwarded to destinations where the complainant has no offices, it appeared that The Western Union Telegraph Company made a charge for the word "via" and for the name of the place where the message was delivered to it for further transmission, in addition to the regular rate between the point of transfer and the point of delivery.

Upon the same reasoning which was the basis of its order of November 8, 1911, directing The Western Union Telegraph Company to desist from collecting charges of a similar nature from the Postal Telegraph-Cable Company, the commission held that the practice complained of herein was unjust, unreasonable and unduly discriminatory, and that the charge for such transferred messages should not be on the same basis as the charge for forwarded messages.

It was therefore ordered that the respondent desist from the practice complained of in all cases where no charge is made for the originating addresses and dates upon telegrams originating at the point of transfer.\*

**ORDER.**

It appears from the complaint and the answer herein and the evidence taken at the hearing, that the Postal Telegraph-Cable Company receives messages at competitive points for points at which it has no office but at which The Western Union Telegraph Company has offices; that the Postal Tele-

\*Editor's headnote.

graph-Cable Company transmits the said messages so received to one of its own offices nearest to the point of delivery, and at such office transfers the messages to The Western Union Telegraph Company and pays for the transmission of such messages from the point of delivery to the point of address, the regular local rate of The Western Union Telegraph Company for messages between the point at which it receives the message and the point at which it is delivered.

It further appears that The Western Union Telegraph Company in charging for the transmission of such transferred messages, charges the regular or local rates between the point of transfer and the point of delivery and in addition thereto charges a further sum for the word "via" and the name of the place where the message was delivered to The Western Union Telegraph Company for further transmission.

This Commission entered an order on the 8th day of November, 1911, after considering a complaint from the Postal Telegraph-Cable Company, in which order the Commission directed The Western Union Telegraph Company to desist from the practice of exacting a charge from the Postal Telegraph-Cable Company for the originating address and date upon such transferred telegrams in all cases where no charge is made for the originating address and dates upon telegrams delivered to said Western Union Telegraph Company originating at the point of transfer. The Commission issued a further order in that case on the 15th day of January, 1912, in which it denied the application of The Western Union Telegraph Company for a rehearing therein. It appears to the Commission that the same reasoning by which it determined that the charge exacted in that case was unjust, unreasonable and unduly discriminatory now obtains concerning the present practice, and that respondent's contention that the charge for a message delivered to it by the complainant for the transfer is on the same basis as a charge for forwarded messages is not sustained.

*Now, therefore, ordered,* (1) That the charge made by The Western Union Telegraph Company to the Postal Telegraph-Cable Company for the word "via" and the name of the place where the message was delivered to The Western Union Tele-

graph Company for further transmission is unjust, unreasonable and unduly discriminatory and that the said Western Union Telegraph Company be and it hereby is required to desist from the practice of exacting said charge from the said Postal Telegraph-Cable Company, in all cases where no charge is made for the originating address and date upon telegrams delivered to said Western Union Telegraph Company originating at the point of transfer.

*Ordered*, (2) That this order shall become effective on the 1st day of March, 1913, and that the respondent, Western Union Telegraph Company, shall notify this Commission on or before the 17th day of February, 1913, whether or not the terms of this order are to be accepted and obeyed.

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BENJAMIN BLUM, *Complainant*, vs. NEW YORK TELEPHONE COMPANY, *Respondent*.

*Decided February 12, 1913.*

#### **Business and Residence Rates—Refund for Interrupted Service.**

Complaint (1) that the respondent's flat rate of \$4.00 per month for business telephones at Rockville Centre is unreasonable as compared with that of \$3.00 for residence telephones, and (2) that the respondent does not allow subscribers any refund for failure of service on account of storms, poor line construction or other conditions for which the subscriber is not responsible, unless the subscriber notifies the respondent in writing within a reasonable time after the interruption.

1. The Commission distinguished the flat rate service at Rockville Centre from the measured service in effect in New York City, and held that, in view of the present recognition of the principle that a higher rate may be charged for unlimited business service than for similar residence service, the complaint with respect to the rate is not based upon adequate considerations.

2. With respect to the question of a refund when the service is interrupted, the Commission stated that this branch of the complaint would be made the subject of administrative inquiry rather than action upon a formal complaint, and that the complainant would be advised as to the result of such inquiry.

An order was entered accordingly, dismissing the complaint.\*

#### **ORDER.**

Complainant alleges that respondent's charge of \$4.00 per month as a flat rate for business telephones at Rockville

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\*Editor's headnote.

Centre in the town of Hempstead is unreasonable as compared with its flat rate of \$3.00 per month for residence telephones. Complainant is now taking the residence service at the \$3.00 rate in his own name. He desires to add to the telephone listing the following: "Tanglewood Poultry Farm", a name adopted by complainant for his business at Rockville Centre. Respondent's tariffs provide \$3.00 per month as a flat rate for residence service and \$4.00 per month for business service. Such distinction is made by respondent not because of complainant's residence or business alone, but as a distinction between residence service and business service generally in that community, and respondent does generally as appears from its tariffs make a distinction in its rates as between business and residence service. A somewhat different practice is followed by respondent in the boroughs of Manhattan and Brooklyn, City of New York, where the message rate or measured service is in effect. Respondent makes the higher charge generally for business service because of the greater use of a telephone in business than for residence purposes, and where the measured service is in effect such greater use of a business telephone is taken care of by the additional charge for messages exceeding the maximum number of calls allowed under the monthly rate. From the company's tariffs on file with the Commission and the present recognition that a higher rate may be charged for business than for residence unlimited service and the general answer made by the telephone company informally to the complainant's original communication, the Commission is of the opinion that the complaint in respect of the rate is not based upon adequate considerations.

Complainant also alleges that respondent does not allow subscribers any refund for service not supplied on account of wires being out of use due to storms, poor line construction or other conditions not caused by any fault of the subscriber unless the subscriber shall notify the respondent in writing a reasonable time after the interruption in service occurs. This branch of the complaint will be made the subject of administrative inquiry rather than action upon a formal complaint and the complainant will be advised as to the result



of such inquiry. For the reasons above stated and after due consideration, it is

*Ordered*, That the complaint in this proceeding be and is hereby dismissed, but that so much of the complaint as refers to service interruptions for which no rate allowance is made, be treated as a subject for general inquiry and such administrative action by the Commission as may appear to be required.

## OHIO.

### Public Service Commission.

A. H. DUNHAM, *Complainant*, v. CENTRAL UNION TELEPHONE COMPANY, *Defendant*.

No. 361.

*Decided February 5, 1913.*

#### Classification of Service—Service to Physicians—Discrimination—Cost of Service.

Complaint alleging that the defendant had been furnishing the complainant and other physicians with a service, known as two-party line service, consisting of two telephones, one in the complainant's office and the other in his residence, both of which telephones rang at the same time by one operation at the defendant's exchange; that the rate of \$66 per year previously charged for this service and obtained by adding together the two-party line business rate (\$42) and the two-party line residence rate (\$24) had been arbitrarily and unlawfully increased to \$96 per year, although no change had been made in the rate for a like service to persons engaged in other lines of business and other professions; and that the action of the defendant in advancing the rate was an arbitrary, unjust and unlawful discrimination against the complainant.

The Commission found that the class of service furnished the complainant was peculiar and unusual and limited in actual practice to the complainant and other physicians; that no other person or persons were receiving a similar service and that said service was not similar in character to what is properly designated as two-party line service. The Commission found further that the defendant had not provided in its rate schedules any rates properly applying to said service and that the cost of installing such service is slightly less, and the cost of operating slightly more than the cost of installing and operating single, or individual line service, but that the difference is so slight as not to affect the determination of a reasonable rate for such service.

The Commission held that the increase complained of was not an arbitrary, unlawful and unjust discrimination against the complainant.

*Ordered*, That the defendant shall establish reasonable rates for the class of service rendered the complainant, which service shall be available to all persons.

That the defendant shall not be required to furnish such service where both telephones cannot be operated from the same central exchange.

That the complaint, in so far as it alleges discrimination against the complainant, be dismissed.\*

\*Editor's headnote.

## ORDER.

This case came on to be heard upon the complaint of Alonzo H. Dunham alleging that complainant and others, not named, on whose behalf said complaint is filed, are practicing physicians in the City of Dayton, Ohio; that defendant, prior to October twenty-fifth, 1911, furnished to complainant and others in whose behalf this complaint is filed, telephone service which consisted of the installation of a telephone in complainants' and the other physicians' offices and, also, a telephone in their residences, both of which telephones are connected at the local exchange of defendant and both of which ring by one operation at the exchange at the same time, and known as two-party line service; that the cost of this service to the patron prior to said October twenty-fifth, 1911, was \$66.00 per year, which sum was obtained by adding together the two-party line business rate (\$42.00) and the two-party line residence rate (\$24.00); that on said October twenty-fifth, 1911, the total cost of said service to complainant and said other physicians was arbitrarily and unlawfully raised by defendant to \$96.00 per year, but that no change was then, or has since been made for a like service to persons engaged in other lines of business and other professions, and complainant avers that the action of defendant in advancing the rates from said service to \$96.00 per year from \$66.00 was and is an arbitrary, unjust and unlawful discrimination against the complainant and those in whose behalf the complaint is made; the answer of the defendant thereto, the evidence and the exhibits.

After considering the pleadings, hearing the evidence and the arguments of counsel and examining the exhibits, the Commission finds that the evidence does not disclose that any person or persons other than the complainant and other physicians in whose behalf said complaint is filed, was at the time said complaint was filed, or thereafter, receiving a service similar to that furnished to complainant and said other physicians, but that said service was peculiar and unusual, and limited in actual practice to complainant and other physicians, and that said service is not what is properly

designated as two-party line service and is not similar or of like character to said two-party line service.

The Commission further finds that the changing of said rate on the twenty-fifth day of October, 1911, by defendant was not an arbitrary, unjust and unlawful discrimination against complainant and said other physicians and was not, in fact, any discrimination against complainant and said other physicians in whose behalf said complaint was filed.

The Commission further finds that said defendant has not designated, set out or described, nor provided rates properly applying to, said service in its schedule of published rates.

The Commission further finds that the cost of installing said service is slightly less and the cost of operation slightly more than the cost of installing and operating single, or individual, line service, but that the difference is so slight as not to affect the determining of a reasonable rate for said service. It is, therefore,

*Ordered*, That the defendant, the said Central Union Telephone Company be, and it is hereby notified, directed and required to establish reasonable rates for the kind of service now and heretofore rendered to complainant and others in whose behalf this complaint was filed, which service shall be available to all persons, and that such reasonable rates so established by said defendant shall not be in excess of the rates for single-party line, or individual, service in the City of Dayton, Ohio. It is further

*Ordered*, That said defendant, Central Union Telephone Company, shall not be required to furnish said service where both telephones sought to be connected together cannot be operated from the same central exchange. It is further

*Ordered*, That the complaint, in so far as it alleges discrimination by defendant against complainant and others, in whose behalf said complaint is filed, be, and it is hereby dismissed.

**IN THE MATTER OF THE JOINT APPLICATION OF THE NEWARK  
TELEPHONE COMPANY AND THE BROWNSVILLE TELEPHONE  
COMPANY FOR THE CONSENT AND APPROVAL OF THE COM-  
MISSION FOR A CONNECTING ARRANGEMENT FOR THE EX-  
CHANGE OF SERVICE BETWEEN THE APPLICANTS.**

**No. 464.**

*Decided February 19, 1913.*

**Physical Connection—Rates for Interchange of Service.**

Upon application for approval of an arrangement for physical connection and exchange of service between the lines of The Newark Telephone Company and The Brownsville Telephone Company, the Commission held that the service furnished the public would be improved under the proposed arrangement and that the public would be furnished adequate service for a reasonable rate.

*Ordered,* That the applicants be authorized to establish physical connection and exchange service after having filed with the Commission schedules of reasonable rates for the service interchanged, provided that there be no diminution of the service now afforded by either applicant, by discontinuing connection or failing or refusing to exchange service with any other company with which connection now exists and exchange of service is maintained.\*

**ORDER.**

The Newark Telephone Company and The Brownsville Telephone Company, corporations organized under the laws of the States of Ohio and West Virginia, with their principal places of business located at Newark, and Brownsville, Licking County, Ohio, respectively, having, on the twenty-seventh day of January, 1913, filed their joint petition for the consent to and approval of, by the Commission, a connecting arrangement and an exchange of service between the telephone systems of said companies, as fully set out in said petition and exhibits attached thereto, and the time for hearing said matter having been fixed for Friday, February fourteenth, 1913, at three o'clock p. m. and due notice of the time and place of said hearing having been given, and having been heard on said day and the further considerations thereof continued

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\*Editor's headnote.

from day to day, the same came on this day for final consideration upon the petition, the evidence and exhibits.

After considering the pleadings, hearing the evidence and examining the exhibits, and being fully advised in the premises, and it appearing that the service furnished the public will be improved thereby, and it appearing further that the public will be furnished adequate service for a reasonable and just rate, rental, toll or charge, the Commission is satisfied that the prayer of said petition should be granted. It is, therefore,

*Ordered*, That said The Newark Telephone Company and said The Brownsville Telephone Company be, and they are hereby authorized to form a physical connection between the plant and system of said The Newark Telephone Company and the plant and system of said The Brownsville Telephone Company for the exchange of service between the companies, as provided by law. It is further

*Ordered*, That said The Newark Telephone Company and said The Brownsville Telephone Company forthwith file with the Commission schedules of reasonable rates for said interchange service. It is further

*Ordered*, That the authority herein granted may be exercised by said The Newark Telephone Company and said The Brownsville Telephone Company after such schedules of reasonable rates have been filed with and approved by the Commission, and not prior thereto:

*Provided*, There be no diminution of the service now afforded by either of said companies and enjoyed by their respective patrons, by discontinuing connection or failing and refusing to exchange service with any other company with which connection now exists and exchange of service is maintained.

## **OKLAHOMA.**

### **Corporation Commission.**

#### **IN RE PAYMENT OF CHARGES BY RURAL TELEPHONE COMPANIES TO EXCHANGE FOR SWITCHING SERVICE.**

*Decided January 25, 1913.*

#### **Promulgation of Rules Governing Collection of Charges for Switching Service—Advance Payment—Discontinuance of Service.**

#### **TO ALL TELEPHONE COMPANIES:**

You are hereby notified that the Commission has promulgated the following rules in reference to the collection of charges for switching of rural lines. These rules are only an expression of the Commission as to what is reasonable. If there is any objection thereto because of some particular condition, same may be presented to the Commission and a different rule promulgated to meet such conditions:

Rule No. 1. The Telephone Company shall have the right to require all **RURAL PARTY TELEPHONE LINES** to pay switching service charges quarterly in advance.

Rule No. 2. The Telephone Company shall have the right to require the entire switching service charges due from each line to be paid on the tenth (10th) day of the first month of the quarter in which such charges become due and shall extend service up to and inclusive of the fifteenth (15th) day of the same month. In the event of the charges not being paid on the fifteenth (15th) the company shall have the right to disconnect the line and refuse further service to same until the charges due are paid.

Rule No. 3. The Telephone Company shall have the right to require each Rural Party Telephone Line to select one of its members to transact the business of such line with the Telephone Company.

**Oklahoma City, Okla., January 25, 1913.**

## **OREGON.**

### **Railroad Commission.**

**IN THE MATTER OF THE APPLICATION OF THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY FOR AUTHORITY TO CONTINUE IN EFFECT ALL RATES AND CHARGES AS SHOWN BY SCHEDULE O. R. C. No. 2 AND AUTHORITY TO DEMAND, COLLECT AND RECEIVE ALL OF SAID RATES AND CHARGES FOR THE SERVICE SHOWN THEREIN.**

**No. U. F.—5.**

*Decided February 3, 1913.*

### **Maintenance of Increased Rates.**

Upon application for authority to maintain rates in excess of those in effect January 1st, 1911, the Commission held that the application should show specifically the rates which are desired to be advanced or discontinued and that a general reference to tariffs or a general statement of the number of such advances contained in a tariff is insufficient under the statute. The burden of examining several hundred pages of tariff so as to discover by comparison just what rates are meant to be included in the application is thereby cast upon the Commission.

*Ordered*, That unless the applicant shall file with the Commission, within five days, an amended application, stating specifically the advances or discontinuances desired, the application will be dismissed.\*

### **ORDER.**

This is an application for authority to maintain increased rates over those in effect January 1st, 1911, made under the provision of Section 77 of the Public Utilities Act (Section 556 of the Commission's Compilation).

The Application shows:

"That a comparison of said schedule O. R. C. No. 2 with O. R. C. No. 1 will show that in certain instances the rates and charges in Oregon are less and in some instances more

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\*Editor's headnote.



than those for the same service as shown by O. R. C. No. 1 of date January 1st, 1911; that a like comparison between schedule O. R. C. No. 101 with O. R. C. 100 will show certain changes in rates charged at the present time over those as indicated by O. R. C. No. 100 of date January 1st, 1911.

"That the number of exchange rates in the State of Oregon reduced since January 1st, 1911, is ninety (90), while the number of exchange rates increased since that date is forty-four (44). That the total number of exchange rates which were effective January 1st, 1911, and which have not been changed and are shown by O. R. C. No. 2 is approximately 670.

"That the number of toll rates decreased since January 1st, 1911, in the State of Oregon is one hundred and seventy-three (173). That the number of toll rates increased since 1911 in the State of Oregon is twenty-one (21). That it is impossible to determine at this time the total number of toll rates which have remained unchanged since January 1st, 1911, because the number is very great."

Then follows the reason alleged by the applicant justifying the increase requested.

The statute is as follows:

"Any public utility desiring to advance or discontinue any such rate or rates may make application to the Commission in writing stating the advance in or discontinuance of the rate or rates desired, giving the reasons for such advance or discontinuation."

It is provided that upon receiving such application the Commission shall fix the time and place of hearing and give such notice to interested parties as it deems proper and reasonable.

In our opinion a blanket application of this character is clearly insufficient under the statute. It is not sufficient to refer generally to a tariff and say that the rates advanced are contained therein and thus cast the burden upon the Commission of examining several hundred pages of tariff, to discover by comparison just what rates are meant to be included in the application. Application should show specifically the rates which are desired to be advanced or dis-

continued, and a general reference to tariffs or general statement of the number such advances contained in tariff is insufficient.

Examination of the tariffs referred to in the application shows that numerous rates included in the earlier tariffs have been discontinued and are not covered by the later tariff. The application is silent as to such discontinuances although such discontinuances are clearly illegal, except as far as the same may be authorized by the order of the Commission.

*It is therefore ordered*, That unless the applicant, The Pacific Telegraph and Telephone Company, shall within five days from this date file with the Commission an amended application, stating specifically the advances or discontinuances desired, its application will be dismissed without further notice.

Dated, Salem, Oregon, February 3d, 1913.

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IN THE MATTER OF THE APPLICATION OF THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY TO CHANGE CERTAIN IRREGULAR AND OBSOLETE CHARGES TO ITS STANDARD CHARGES.

File U. F.—6.

*Decided February 3, 1913.*

**Standardization of Rates.**

Upon application to discontinue certain irregular charges originally provided for by contract, some of which contracts are still in existence, the Commission held that the application was insufficient in that it did not show specifically the advances or discontinuances desired, and that the application should be amended so as to show specifically the names of persons and particulars as to the rates which it was desired to advance or discontinue, giving the reasons therefor.

*Ordered*, That unless the applicant shall file with the Commission, within five days, an amended application showing specifically the full particulars as to such irregular rates, the application will be dismissed.\*

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\*Editor's headnote.

## ORDER.

The application shows that the applicant has filed with the Commission its schedule O. R. C. No. 2, dated January 15th, 1913, showing all its exchange rates and charges in the State of Oregon. That the applicant has also filed with the Commission a statement showing certain irregular charges for local services, which charges and the service furnished therefor were originally provided for by contract, some of which contracts are still in existence, and in many cases which contracts, by the original terms thereof, have expired, but the service has been continued for the same charge as first agreed upon. The application continues as follows:

"The statement of such irregular charges filed herein, when compared with your petitioner's schedule O. R. C. No. 2 covering exchange rates, shows that such irregular charges are less than those for the same service indicated in said schedule O. R. C. No. 2."

The application then continues to show that no new business is being taken under these irregular charges and that the applicant has been eliminating such charges as rapidly as possible, and, if permitted to do so, will gradually change all of said charges, rates and service as shown on the schedule, or if required, will at once change all of said irregular charges to those shown on said schedule O. R. C. No. 2.

On the authority of the opinion of the Commission of even date in File No. U-F-5, in the matter of The Pacific Telephone and Telegraph Company, this application is insufficient in that it does not show specifically the advance in or discontinuance of the rate or rates desired. The application should be amended to show specifically names of persons and particulars as to rates which it is now desired to advance or discontinue, giving the reasons therefor. This information is necessary in order that the Commission may comply with the statute and give such notice to interested parties as shall be proper and reasonable. To cut off such contract rates without hearing from the parties interested

and without giving them any opportunity to be heard is undesirable.

*It is therefore ordered,* That unless the applicant shall within five days from this date file with the Commission an amended application showing specifically the full particulars as to such irregular rates, said application will be dismissed.

Dated, Salem, Oregon, February 3d, 1913.

## PART II.

### COMMISSION ORDERS, RULINGS AND DECISIONS OF INTEREST TO TELEPHONE AND TELE- GRAPH COMPANIES.

#### CALIFORNIA.

##### Railroad Commission.

GRIFFING BANCROFT AND PHILIP BANCROFT, *vs.* JAMES A.  
MURRAY AND ED FLETCHER.

Case No. 304.—Decision No. 400.

*Decided January 8, 1913.*

##### Jurisdiction to Order Service Beyond the Public Profession.

The essence of this application is for authorization to use the property of an existing utility for the purpose of conveying complainants' water for their own use.

*Held:* The Commission has no authority to compel a public utility to permit the use of its property by a private person for his own private uses.

*Riley & Hubbell, for Complainants.*

*A. H. Sweet, for Defendants.*

*Albert Schoonover, for Riparian Land Owners.*

#### REPORT.

THELEN, *Commissioner:*

This was an argument on the question of whether or not the Commission has jurisdiction to afford the relief asked for in the complaint. The Commission questioned its authority and asked the parties to present such arguments as they might have on the question.

Complainants allege in effect that they are the owners of some eight hundred acres of land in Spring Valley, San Diego County, together with a dam, reservoir and water

distributing system situated thereon, and that they are engaged in the business of raising on said land, olives and other farm products: that they cannot develop on the land water sufficient for their purposes: that they have appropriated some 320 inches of water at a point some 1,000 feet above the diverting dam of the Cuyamaca Water System in the San Diego River: that complainants contemplate, unless they secure the order of this Commission as prayed for, to build a diverting dam across the river at the point of appropriation and to convey the water appropriated by means of a 20-inch pipe over rugged country, some 25 miles to complainants' land: and that the Cuyamaca Water System's flume will not be in use for the purpose of carrying water during the winter season for irrigation purposes and that the flume could conveniently be used during this season for conveying the water of complainants to a point from which it could be taken from the flume and thence conveyed to complainants' reservoir.

On these allegations complainants ask for an order permitting and authorizing them to carry their water through the flume and water conduits of said Cuyamaca Water System and establishing rules and regulations and conditions relative to the use of the flume and water conduits of the Cuyamaca Water System, and also for the establishment by this Commission of the charges for the use by complainants of said flume and water conduits.

There is no claim that the owners of the Cuyamaca Water System have held themselves out to the public as common carriers of water. The essence of the application is for authorization to use the property of an existing utility for the purpose of conveying complainants' water for their own private uses. Complainants were unable to point to any specific provision of the Public Utilities Act conferring authority upon the Commission to make the order requested, but relied on the general powers conferred upon the Commission by section 31 and section 32 (b) of the Public Utilities Act. Those sections confer upon the Commission general power to supervise and regulate every public utility in the state and to prescribe the rates, rules and regulations of

such utilities. I am unable to construe these sections as conferring upon the Commission authority to compel a public utility to permit the use of its property by a private person for his own private uses. It is true, that under section 41 of the Public Utilities Act, the Commission may at times compel a public utility to permit another public utility to use a portion of its plant or system located on or over or under any street or highway, but that section can have no applicability to a case in which the use is desired by a private individual for his own private purposes.

If complainants were correct in their contention, the owner of a natural gas well might with equal logic demand the right to run his gas through the pipes of the local gas company and thereafter to take out the gas for his own purposes.

I can find no authority in the Public Utilities Act for the relief prayed for in the complaint, and accordingly recommend that the complaint be dismissed.

I submit herewith the following form of order:

#### ORDER.

*It is hereby ordered,* That the complaint in the proceeding entitled as above be and the same is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 8th day of January, 1913.

IN THE MATTER OF THE APPLICATION OF THE CALIFORNIA-  
MICHIGAN LAND AND WATER COMPANY FOR PERMISSION  
TO EXERCISE FRANCHISE, AND FOR EXTENSIONS.

Application No. 273.—Decision No. 407.

*Decided January 15, 1913.*

Public Convenience and Necessity—Invasion of Occupied Field  
—Inadequate Service—Unreasonable Rates—Competition—  
Ability of Applicant to Serve—Interests of Bondholders  
of Delinquent Utility.

Where one water company makes application to invade the territory of an existing company and to furnish therein the same service, the determination involves consideration (1) as to whether the supply of water now furnished by the existing company is adequate; (2) has the existing company discharged its duty to the public by giving efficient service and reasonable rates; (3) if either of these propositions is decided in the negative, can the situation be improved by permitting applicant to exercise its franchise rights to enter into competition with the existing company; and (4) is applicant in possession, financially, and by reason of possessing an ample supply of water, to construct, equip and maintain a plant or system to adequately supply the consumers and water users of the tract in question at reasonable rates.

The Commission finds that the failure of the existing company to render adequate service at reasonable rates has been gross and inexcusable; that applicant is possessed of excess water in quantity amply sufficient to furnish adequate service, that it is prepared to construct the necessary distributing system and that it has secured, as customers, at prices satisfactory to them, substantially all of the customers of respondent.

The principle laid down in the matter of Pacific Gas and Electric Company vs. The Great Western Power Company, Case No. 269,\* referred to and held applicable to this case.

*Held, further*, bondholders have such an interest in the property of a public utility, that they should exercise whatever influence they have to see that such utility adequately performs its duty to the public.

*Held, further*, that public convenience and necessity require and will require the granting of the application herein.

*B. J. Bradner*, for applicant.

*Edwin C. Cribb*, for Cribb-Brodek Light & Water Company.

## REPORT.

LOVELAND, *Commissioner*:

Applicant desires to supply water for domestic and irrigation purposes to residents on what is known as the Cribb-

\*Printed in Commission Leaflet No. 8, page 63.



Brodek Tract of land, Los Angeles County, California, and makes application herein, under section 50 of the Public Utilities Act, for the requisite certificate of public convenience and necessity. It proposes to develop the water supply upon its own lands which are adjacent to the Cribb-Brodek Tract.

The Cribb-Brodek Light and Water Company is at present distributing water upon this tract and has been engaged in the business for a number of years. The existing company opposes the invasion of its field of operation by applicant.

Applicant contends that the source of water supply of respondent is inadequate to the needs of the community; that the rates charged are excessive; and that the property owners upon the tract, in consequence, have been unable satisfactorily to develop their lands. In support of this contention, the petition sets forth that about eighty (80) of the property owners, approximately seven-eighths of all those residing upon the tract, have contracts with applicant to be supplied with water for a period of three years at rates and upon terms and conditions prescribed in the contracts. Furthermore, that these contracts were made upon the part of applicant in reply to a demand of the consumers voiced at a mass meeting held by them for the purpose of discussing the water situation, and that applicant stands ready to furnish the water at the rates agreed upon, although it does not believe there will be any profit in the business until the community becomes more thickly settled and the consumption of water greater.

The sole question before the Commission is whether "the present or future public convenience and necessity require or will require" (section 50, Public Utilities Act) the construction by applicant of its proposed water distribution system and the exercise of the rights and privileges under the franchises granted by the local authorities, pursuant to which it obtains the privilege of furnishing water in this district.

The determination involves consideration (1) as to whether the supply of water now furnished by the existing company is adequate; (2) has the existing company discharged its duty to the public by giving efficient service and reasonable

rates; (3) if either of these propositions is decided in the negative, can the situation be improved by permitting applicant to exercise its franchise rights to enter into competition with the existing company; and (4) is applicant in position, financially, and by reason of possessing an ample supply of water, to construct, equip and maintain a plant or system to adequately supply the consumers and water users of the tract in question at reasonable rates.

A hearing was had in Los Angeles November 21st, 1912, following which, briefs and supplemental papers were filed and an examination made into the entire situation by the Commission's Engineering Division. Upon the evidence introduced and all the documents in the matter, the facts may now be presented.

California-Michigan Land and Water Company, a domestic corporation, was incorporated December 21st, 1910, with the primary object of engaging in real estate transactions, but having the chartered right to develop and sell water and other substances. Subsequently it acquired certain property in Los Angeles County known as the Michillinda Tract, comprising about 167 acres, which the company proposes to subdivide and sell in small lots for suburban residential purposes. According to engineering estimates, submitted by applicant, some two hundred inches of water may be developed upon this tract, which amount is stated to be largely in excess of the subdivision requirements.

Upon application of this company, the board of supervisors of Los Angeles County, California, granted it a franchise under date of May 13th, 1912, to construct a water distributing system upon certain streets and highways in said county of Los Angeles, California, and to distribute and sell water for domestic and irrigating purposes for a period of forty years. The area covered in the franchise consists of about five thousand acres, mostly undeveloped and with a scattered population. Within this area, however, are several tracts under cultivation by individuals owning small acreages therein. One of these is the Sunny Slope Vineyard Tract, the residents upon which are supplied with water by the Sunny Slope Water Company. Another, is

the Cribb-Brodek Tract. It is applicant's present desire to distribute water only to those residing in the Cribb-Brodek Tract.

In addition to its present supply, which the Commission is satisfied is abundant for the purposes stated, applicant has made arrangements to purchase water from another source in the amount of several hundred inches and stands ready to develop this source if necessary.

The Cribb-Brodek Light and Water Company has between eighty (80) and one hundred (100) consumers. At a hearing twenty of these appeared as witnesses for applicant and gave evidence as to the inadequacy, inefficiency and unreasonable rates of the Cribb-Brodek Light and Water Company. This evidence substantially is to the effect that the inadequacy of supply, the low pressure and the high rates charged, all combine to make impracticable the agricultural development of their lands; that when the company was requested to better the service, the consumers were told that the water operations were not profitable, and the threat was made to shut down the plant. They also testified that some of the consumers had invested in the capital stock of the Sunny Slope Water Company, a mutual concern, in order to obtain rights to water that went with such ownership.

The prices charged by the respondent company have varied from time to time and have not been adhered to with respect to all consumers alike. When the consumers began negotiations to obtain water from applicant, respondent was charging a minimum monthly rate of one and 50/100 (\$1.50) dollars for fifteen hundred (1,500) cubic feet, (11,250 gallons) for irrigation, with eight cents per hundred cubic feet for all used in excess of the minimum, and had served notice of its intention to increase the minimum rate to two (\$2) dollars for fifteen hundred (1,500) cubic feet.

Applicant proposes to make a minimum monthly charge of two (\$2) dollars for ten thousand (10,000) gallons (the equivalent of 1,333  $\frac{1}{3}$  cubic feet), with a flat rate of three and one-fourth ( $3\frac{1}{4}$ ) cents per hundred cubic feet for all in excess of the minimum. With this proposed rate, the consumers have evidenced their entire satisfaction by entering into

contracts for service. The Commission does not in this proceeding pass upon the reasonableness of said charge or rate, nor does it pass upon any of the contracts for service.

The Cribb-Brodek Light and Water Company purchased its water system from the Cribb-Brodek Land Company, paying therefor approximately fourteen thousand (\$14,000) dollars. This system consists of a well upon the tract in question, a lift pump, the distributing system on the tract and two cement-lined reservoirs. With the water system also was acquired several small separate parcels of land which were subsequently sold for five thousand five hundred (\$5,500) dollars and a parcel of land in the Sunny Slope Vineyard Tract which respondent still owns. This latter property is water bearing land and is retained in anticipation of developing and distributing the water, for which purpose a franchise has been obtained from the local authorities permitting the conveyance to and distribution of such water upon the Cribb-Brodek Tract, among other lands.

The testimony shows that the well is about five hundred feet deep and the water which stands in it to within about eighty feet of the ground surface, furnishes a supply of not exceeding thirty inches; that through improper handling, this well has sanded to a depth of twenty-four feet and the sand, at times pumped with the water, seriously interferes with good service; that respondent has been delivering into its system a small quantity of water obtained from the Sunny Slope Water Company, which in itself is an admission of the inadequacy of its own source of supply.

For the twelve months ended October 31st, 1912, respondent's gross earnings from water operations were two thousand five hundred fifty-eight and 45/100 (\$2,558.45) dollars; its expenses, including taxes and seven per cent. interest on ten thousand (\$10,000) dollars bonds, two thousand two hundred thirteen and 76/100 (\$2,213.76) dollars, leaving a net revenue of three hundred forty-four and 69/100 (\$344.69) dollars without deducting the maintenance charges, depreciation, or reserve for sinking fund.

The weight of evidence leads to no other conclusion than that respondent has been greatly remiss in its obligations to

the public. Its consumers are entitled to adequate service at all times and at reasonable rates. Its failure to render adequate service at reasonable rates has been gross and inexcusable. Owning, as it claims to do, an ample additional supply of water, and holding a franchise which would permit it to develop and distribute from such source, it has elected to follow a policy of indifference to the needs of its patrons. By reason of inconsistent charges, insufficient and poor service, it has prevented its consumers from improving their lands and has compelled those who were in a position to do so to obtain service elsewhere. It has by its conduct aroused generally an antagonistic feeling toward it. Some improvements to its system have been made but not of an extent and character to make the plant as a whole equal to the fair requirements of the community.

It satisfactorily appears that California-Michigan Land and Water Company, the applicant herein, is possessed of water beyond its own needs; that the excess is amply sufficient for the purposes stated; that it is prepared to construct the necessary distributing system; and that it has secured, as customers, at prices satisfactory to them, substantially all of the customers of respondent. Every reason exists why the application should be granted except for the consequent effect upon the value of the property of the existing company against which is outstanding a bonded indebtedness.

This naturally brings up the question as to what attitude this Commission should and will assume in situations where, by granting the application of a public utility to serve the public in a territory or section already occupied by a like public utility, when the latter has been remiss in its duty to its patrons, and the granting of such application will tend to reduce the value of the property of the company already in the field, and incidentally cause loss to the holders of bonds which have been issued against such property.

In this particular case it happens that the bonds are largely owned by the same parties who control the protesting company, and who are responsible for the failure to supply sufficient and adequate service at reasonable rates to the tract comprehended in the application; but the Com-

mission believes that the attention of bondholders generally should be called to the fact that failure upon the part of the company whose bonds they hold, to perform its duty to the public by rendering adequate service at reasonable rates, will ordinarily result in this Commission's permitting competition with such delinquent company, with the probable result that the property upon which the bonds are a lien will be depreciated in value.

Bondholders have such an interest in the property of a public utility, that they should exercise whatever influence they have to see that such utility adequately performs its duty toward the public.

In Case No. 269, *Pacific Gas and Electric Company vs. The Great Western Power Company\**, heretofore decided by this Commission, it was held, and the principle was announced, that public utilities must not wait "until competition is at their door," before improving inefficient service and correcting unreasonable rates. I quote from the language of that decision:

"If any territory served by an existing utility is afflicted by such utility with excessive rates or inefficient service, and a second utility of the same kind desires to enter such territory, and this Commission should say to the existing utility: 'Although while you had matters your own way, you lost sight of your duty to the public; yet we still reserve for you this territory in consideration of your future good behavior,' in how many instances does any one suppose a new utility would apply to enter a territory served by an existing utility, when the only effect of all its trouble and expense would be the cheapening of the rate and the improvement of the service of the existing utility? \* \* \*

"Rather do we announce the rule that only until the time of threatened competition shall the existing utility be allowed to put itself in such a position with reference to its patrons, that this Commission may find that such patrons are adequately served at reasonable rates. By announcing this principle we hope we shall hold out

to the existing utilities an incentive which will induce them voluntarily, without burdening this Commission or other governmental authorities to accord to the communities of this state those rates and that service to which they are in justice entitled, and to the new utilities we shall likewise hold out the incentive that on the discovery by them of territory which is not accorded reasonable service and just rates, they may have the privilege of entering therein if they are willing to accord fair treatment to such territory."

I believe that principle is sound and should be adhered to in this case, and I therefore find that public convenience and necessity require and will require the granting of the application of the California-Michigan Land and Water Company to exercise its franchise rights and serve water for domestic purposes and for irrigation to the residents and water users of that section or tract comprehended in this application now served by the Cribb-Brodek and Water Company. I recommend that the following order be issued:

### ORDER.

The California-Michigan Land and Water Company having heretofore filed with this Commission its application under section 50 of the Public Utilities Act, for a certificate of public convenience and necessity and for permission to exercise its franchise rights and privileges under a certain franchise heretofore, to wit, on May 13th, 1912, granted to it by the board of supervisors of the county of Los Angeles, California, to construct, maintain and operate a distributing system for the purpose of supplying water for domestic purposes and for irrigation, to the residents and water users of a certain tract or section in Los Angeles County, California, known and described in this application as the Cribb-Brodek Tract;

And the case having been regularly heard, and it appearing from the testimony that the Cribb-Brodek Light and Water Company, which company has heretofore served and is now serving the said tract, has been remiss in its duty to

the public and failed to give to its consumers adequate service at reasonable rates, and that through such failure residents of the Cribb-Brodek Tract have been unable to secure water either in sufficient quantity or at reasonable rates, to improve their lands, while some have been compelled to arrange with other adjacent companies for water to save their crops and lawns, and that said Cribb-Brodek Land and Water Company has been repeatedly requested in the past to improve its service and reduce to a reasonable figure its rates for water for irrigation, but has ignored and disregarded such request;

And it appearing further that The California-Michigan Land and Water Company is in condition, financially, to install a system and serve the residents and water users of the Cribb-Brodek Tract, and that it has or can develop an ample supply of water for that purpose in addition to that which it will require to adequately serve other sections covered by its franchise or franchises, and that it has offered to serve water to the residents and users of the Cribb-Brodek Tract at a minimum monthly charge of two dollars (\$2.00) for ten thousand gallons (equivalent to one thousand three hundred thirty-three and one-third ( $1,333 \frac{1}{3}$ ) cubic feet), with a flat rate of three and one-fourth ( $3\frac{1}{4}$ ) cents per hundred (100) cubic feet for all in excess of the minimum, with which rate the consumers have evidenced their satisfaction by entering into contracts for the service.

*Now, therefore, be it ordered*, That The California-Michigan Land and Water Company be, and it is hereby granted permission to construct, equip and maintain a plant or system for the distribution of water for domestic purposes and for irrigation in the tract known and described as the Cribb-Brodek Tract in the county of Los Angeles, State of California; *provided*, that said California-Michigan Land and Water Company shall supply water to the residents and users of said tract at the rate of not to exceed two dollars (\$2.00) per month for ten thousand (10,000) gallons (one thousand three hundred thirty-three and one-third ( $1,333 \frac{1}{3}$ ) cubic feet) and three and one-fourth ( $3\frac{1}{4}$ ) cents per hundred (100) gallons for all water used in excess of the ten



thousand (10,000) gallons per month; *and provided, further*, that should said California-Michigan Land and Water Company supply any of its customers, regardless of where they are located, at a rate less than the rate above mentioned to be charged the consumers of the Cribb-Brodek Tract, then the rate to said consumers of said Cribb-Brodek Tract shall immediately be reduced to such lower rate.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, this 15th day of January, 1913.

## MARYLAND.

### Public Service Commission.

#### IN THE MATTER OF THE COMPLAINT OF J. WATSON THOMPSON vs. CAMBRIDGE GAS, ELECTRIC LIGHT AND POWER COM- PANY.

Case No. 496.—Order No. 1041.

*Decided January 14, 1913.*

#### Duty to Serve Small Consumers—Effect of Contract with Municipality Fixing Rate.

Upon complaint as to a charge of fifty cents per month for gas meters alleged to be in violation of a contract between the Town Commissioners of Cambridge and the defendant Company, under the provisions of which the Company agreed "to furnish gas to all private consumers at a rate not to exceed \$1.50 per thousand feet," the Commission held that the claim of the Company that the complainant is not entitled to be served because he is a small user of gas is not in accordance with the practice of other gas companies, and that the contract between the Town Commissioners and the Company is controlling in this case. The mere filing of a schedule of rates with the Commission is ineffective to modify a pre-existing contract such as the one in question. After the expiration of the contract, the rates on file will become effective.

*Ordered*, That the defendant desist from charging a meter rental of fifty cents per month and furnish gas at a rate not exceeding \$1.50 per one thousand feet as long as the contract with the Town Commissioners of Cambridge shall remain in force.\*

### OPINION.

#### HERING, *Commissioner*:

The complaint in this case was filed on November 18th, 1912, by J. Watson Thompson, of Cambridge, Maryland, alleging that The Cambridge Gas, Electric Light and Power Company is making a charge of fifty cents per month for gas meters. That said charge is made to users of gas, large and small. The complainant also states that this charge is

\*Editor's headnote.

in violation of a contract which the Town Commissioners of Cambridge have with the said Gas, Electric Light and Power Company, under the provisions of which the Company agrees "to furnish gas to all private consumers at a rate not to exceed \$1.50 per thousand feet."

And the complainant claims that while he is a small consumer, he is entitled to gas at the rate fixed in the contract and that the Company cannot legally call upon him to pay fifty cents per month for a meter.

The Company, in its answer, states that it removed the meter from the complainant's premises "because he was not a user of gas or a proposed user of gas, as such terms are commonly used and understood, or a user of gas or a proposed user of gas in such reasonable quantities that entitled him to demand a meter from the defendant and because complainant would not consent to pay the reasonable and uniform charge for rental of meters in such cases provided (such meter rental, however, was not in addition to any charge per one thousand feet for gas used) and prays that the complaint be dismissed."

A hearing was held on December 13th, 1912; both sides were represented and the case was fully heard.

The claim of the Company that because the complainant is a small user of gas and that therefore he is not entitled to be served by the Company, is not in accordance with the practice of other gas companies.

In the brief filed by the counsel for The Consolidated Gas, Electric Light and Power Company of Baltimore, in the case now pending before this Commission, they say upon this point: "This obligation is a most onerous one. It means that this Company must deal with anybody and everybody. It is not permitted to select and choose its customers. It must take the desirable and the undesirable, the profitable and the unprofitable alike. We all know that in ordinary business affairs merchants and manufacturers may refuse to deal with certain undesirable customers. No such option is allowed this Company. It will also readily be seen from the evidence that there is a fairly large percentage of consumers in both gas and electric busi-

ness who consume such small amounts of gas and electricity as to make them really unprofitable customers. Yet all of these must be served and have been served by the Company continuously during its entire existence. This burdensome obligation which the Company can carry out only at a considerable monetary loss to itself is the real consideration which it prays for its franchises."

But apart from that there is in this case a contract between the Town Commissioners of Cambridge and The Cambridge Gas, Electric Light and Power Company to which we have already referred and which we think controls this case.

The General Counsel of the Commission submitted an opinion in this case bearing upon the legal questions involved in which he says:

"In my judgment, the gas company must be held when it contracted to furnish gas to the residents of Cambridge at a price not in excess of \$1.50 per thousand cubic feet, to have had full knowledge of the fact that some of its patrons would be large consumers of gas and others small consumers of gas, and to have adjusted the contract price accordingly. Indeed, it is hardly too much to say, arguing from premises supplied by common knowledge, that it must have realized that in some individual instances, like the present, at any rate, its service would be supplied utterly without profit to itself, but for the profit derived by it from consumption by more valuable patrons.

"Louisville Gas Co. *vs.* Dulaney and Alexander, 100 Ky., 405."

If the Company desired the privilege of charging more in certain cases it should have had a provision to that effect inserted in the contract before it accepted same.

"Montgomery Light and Water Co. *vs.* Watts, 165 Alabama, 370."

Even impossibility of performance, unless created by the act of the law, it is needless to say does not discharge a contracting party from the obligations of his contract.

My conclusion, therefore, harmonizes with the line of reasoning and authority pursued by the complainant in this

case. Nor in my judgment is my conclusion at all invalidated by the fact that the gas company, agreeably with its obligations under the Public Service Commission Law, has filed a schedule of rates with the Commission which provides for a minimum rate of fifty cents per month. So far as the corporation is concerned, such rates from the time that they are filed become the rates of the corporation and continue to be such unless changed in the manner prescribed by the Public Service Commission Law. But the mere filing of such rate is ineffective to modify the pre-existing contract such as exists in this case."

After the expiration of the contract with The Cambridge Gas, Electric Light and Power Company, the rates which will then be on file with the Commission will become effective and will remain so until such time as they may be changed by order of the Commission.

#### ORDER.

In accordance with the opinion filed in this case, it is, this 14th day of January, 1913, by the Public Service Commission of Maryland,

*Ordered*, That The Cambridge Gas, Electric Light and Power Company be, and it is hereby, directed to desist from charging a meter rental of fifty (50) cents per month, and "to furnish gas to all private consumers at a rate not exceeding \$1.50 per thousand feet," as provided for in contract between said Company and the Town Commissioners of Cambridge, and as long as said contract shall remain in force.

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IN THE MATTER OF ISSUE OF BONDS BY THE BALTIMORE AND OHIO RAILROAD.

Order No. 1083.

*Dated February 17, 1913.*

#### Injunction to Prevent Unauthorized Issue of Bonds.

It having come to the knowledge of the Commission that the Baltimore and Ohio Railroad Company intended to issue bonds without securing from

the Commission an order authorizing such issue, the Commission directed its General Counsel to secure an injunction against the threatened violation of the law.\*

Whereas it has come to the knowledge of the Commission that The Baltimore and Ohio Railroad Company, a railroad corporation and common carrier of the State of Maryland, is about to issue its twenty-year bonds dated March 1st, 1913, bearing interest at the rate of four and one-half ( $4\frac{1}{2}$ ) per cent. per annum, and maturing March 1st, 1933, under an indenture or deed of trust to be executed by the said Company and dated March 1st, 1913, which indenture will provide for an authorized issue of Sixty-three Million, Two Hundred and Fifty Thousand Dollars (\$63,250,000) of said bonds;

And whereas, the said Company intends to issue said bonds without applying to and securing from the Commission an order authorizing such issue, in accordance with the provisions of the Public Service Commission Law;

It is therefore, this 17th day of February, 1913, by the Public Service Commission of Maryland,

*Ordered*, That the General Counsel of the Commission be and he is hereby directed to commence an action or proceeding before one of the Judges of the Supreme Bench of Baltimore City, in the name of the Commission, for the purpose of having such violation and threatened violation of the law stopped and prevented by injunction.

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\*Editor's headnote

## MASSACHUSETTS.

### Board of Gas and Electric Light Commissioners.

#### HAVERHILL PETITIONS.

*Decided December 31, 1912.*

#### **Reduction of Rate—Authority of Municipal Council to Fix Rates —Original Cost—Market Value of Securities—Tax Valuation—Physical Valuation—Operating Expenses—Depreciation—Rate of Return.**

Upon complaint by consumers and by the municipal council of 1911, as to the price of 85 cents per thousand cubic feet, charged for gas by The Haverhill Gas Light Company, it appeared that the municipal council of 1910 had granted the company a franchise in which certain prices were specified. The council of 1911, in its complaint, sought to overthrow these prices.

The Board held, among other things, that no action by the municipal authorities could restrict or qualify the Board's rate-fixing power, expressly given it by the legislature, and that, therefore, no estoppel was raised by the action of the council of 1910 to prevent the council of 1911 from prosecuting its complaint before the Board.

In attempting to ascertain the value of the company's property, the Board discussed and rejected original cost, the market value of the company's stock and the tax valuation. Valuations were submitted in behalf of both the company and the city and with respect to these the Board held that it could not, in the general interest of consumers, adopt the city's attitude and discourage the reasonably liberal provision for the future which the company had made; neither could it concede the company's claim that franchise or going-concern value should be included in the property upon which a reasonable return should be based.

The Board held that no satisfactory rule of general application has been laid down for the determination of depreciation. The problems involved are necessarily peculiar to every company, although affected by general considerations. In the determination of a reasonable price, depreciation has an important relation to the physical condition and value of the property which is entitled to a return and to the provisions for future earnings. In view of the constantly changing ratio of output to plant value, it is difficult to adopt any rule fixing a definite amount per 1,000 cubic feet as a proper depreciation allowance to be charged to all companies or to the same company at all times.

In discussing the opposing contentions of the city and the company as to what constituted a fair price, the Board held that the difference of opinion

rested primarily upon radically differing conceptions of the law applicable to a case such as this, where there is an exaggerated disparity between capital stock and assets, owing to the fact that the assets have been largely acquired out of earnings. The city alleged that the company had for many years charged excessive prices and that this extortion should not go unpunished, while the company claimed that its surplus was built up out of the earnings which might have been legally and properly used for dividends. The Board held that in fixing a price for the future, it cannot undertake to reconstruct the past according to some theory which might have maintained a more equitable relation between the company and its consumers.

The Board held that inasmuch as the market value is influenced by the rate of dividends declared, the legislative requirement that additional stock shall be issued at a premium, seems to be an acknowledgment that dividends may be paid at a rate in excess of the return ordinarily required by investors for the use of their money. The fact that this last feature of the law has been preserved long after express authority to reduce the price of gas was granted to this Board, is significant, also, of a legislative view that these two methods of regulation are not inconsistent.

The Board held that in considering the proper return, it was not required to exclude any property of the company necessary for the welfare of the public and actually used therefor, although it might have been provided out of surplus earnings accumulated in past years; nor was it required, in order to escape the charge of confiscation, to ignore the company's history, nor to capitalize the property upon the same basis as if it had reached its present status under different conditions. In view of the fact that the company had borrowed its present floating debt at an average rate not exceeding  $4\frac{1}{2}\%$  and that the stock of successful gas companies in the State was continually traded in on nearly as favorable a basis, the allowance of a return of less than 6% upon the total investment is not subject to the charge of confiscation. The soundness of the Board's decision must not rest on a mathematical demonstration but upon the correctness of the Board's judgment upon all the facts.

The Board held that a price of 80 cents per 1,000 cubic feet is reasonable and is sufficient to cover all reasonable operating costs, a reasonable allowance for depreciation and a fair return upon the value of the property which the company is actually and necessarily employing for the public convenience.\*

These are two complaints in writing, under section 34 of chapter 121 of the Revised Laws, of the price of gas sold by The Haverhill Gas Light Company, one by the municipal council, which under the provisions of chapter 574 of the Acts of 1908 has the authority of mayor, and the other by more than 20 customers of the company.

After due notice public hearings were held in Haverhill, at which the municipal council, the company and its customers

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\*Editor's headnote.



were respectively represented by counsel. Both complaints were heard together.

Counsel for the company moved to dismiss both complaints because of estoppels alleged to exist against the complainants in each case, and this motion should be disposed of before considering the cases on their merits.

In 1910 the municipal council, after protracted negotiations with the representatives of The Haverhill Gas Light Company, granted what is termed a "franchise and consent" to a new corporation organized by the same interests and known as The Haverhill Gas Company. This grant was upon the condition, among other things, that the new company should sell gas to the city and its inhabitants at certain prices named, and that until the new company should acquire the property of the old, the latter should observe and perform all the conditions in the grant. This grant contained also the condition that the old company should rebate to its customers the amounts paid by them during the year ending June 30th, 1910, in excess of 90 cents a thousand, and should deposit \$21,000 with a trustee in trust for this purpose. The old company accepted the conditions of this grant; reduced its price to 90 cents on July 1st, 1910, and to 85 cents on July 1st, 1911, and deposited the \$21,000 for the purpose stated. Twenty-six of the 32 signers of the customers' complaint received such rebate, and the other 6 are fewer than the number required for a valid complaint. These facts were relied upon as the ground for the estoppels.

The history of the old company between 1899 and 1911, so far as concerns the decree of the Board ordering a reduction in price, the resulting litigation and the disposition thereof in 1910, has been given at considerable length in the Board's decision with respect to a proposed issue of stock by the new company, and need be no more than referred to here.

At the time of the acts constituting the alleged estoppels the company was charging its private consumers \$1 a thousand, and the validity of any order of this Board in 1900 requiring a reduction of its price to 80 cents was being con-

tested by the company in the federal courts. The municipal council had two courses open to it,—either to await the results of that litigation or to take the action requisite to acquiring a municipal gas plant. It chose the latter course, and passed the first vote necessary thereto. Had it taken a second favorable vote, and had the voters of the city ratified that action, the company might then have elected to sell its plant to the city, and the order of the Board relative to the price of gas would have had no binding force in determining the price to be thereafter charged by the city.

The negotiations above referred to were had after the first vote of the municipal council and before a second vote was taken, and resulted in the grant by the council of the so-called "franchise and consent," with the express purpose of authorizing a new company, The Haverhill Gas Company, to acquire and operate the plant then owned by the old company, The Haverhill Gas Light Company. The terms, conditions and restrictions set forth in this grant, and rehearsed verbatim in contracts in which both the new and the old companies were expressly required to observe and perform them, so far as they relate to price, provide not that the companies shall charge no more than, but that the companies "shall be entitled to demand and receive," the prices named therein. The facts also are undisputed that the requirements in the grant as to price, and indeed every other requirement, have been fully performed and observed, save perhaps that one whereby the property when acquired by the new company was to be capitalized at "not exceeding its fair value at the time of acquisition." The only alleged breach with respect to capitalization is not that too great an amount of capital has been issued for the property of the old company, since none has been issued, but that the company applied to this Board for the approval of an issue in excess of what the municipal council believed to be its full value.

It is difficult to read the terms of this grant in 1910 without being convinced that the council then intended to prescribe the price to be thereafter charged for gas both by the old and the new company, and to permit prices to be charged

higher than the price determined and ordered by the Board in 1900, although well aware of that order. It is also clear that the old company, having the choice of continuing the litigation or of accepting the terms, conditions and restrictions imposed in the so-called "franchise and consent," chose irrevocably the latter course.

During the hearings there was a good deal of bitter and acrimonious discussion of "good faith and fair dealing." The Board does not intend to enter the field of this discussion. The public and the parties must judge that matter for themselves. The question for the Board to determine is how far, if at all, as a matter of law, the municipal council of 1911 was bound by the action of the municipal council of 1910. Had the council possessed in 1910 the authority to prescribe the prices to be thereafter charged by either company to the extent set forth in said grant, the Board is of the opinion that nothing has since happened which would prevent the council of 1911 from being now estopped from prosecuting this complaint. But the serious difficulty is that the council did not have any express authority to fix the price of gas in Haverhill. No action by local officials can in any way restrict or qualify the authority expressly vested in this Board by the Legislature to interfere to reduce a price. The council's action with respect thereto was at best but the expression of the opinion of its members, entitled to weight because of their official position, but controlling only to the extent to which they in fact represented the sentiments of the inhabitants of the city, and not necessarily conclusive. It is for this reason that the Board believes that, notwithstanding the action of the municipal council of 1910, the council of 1911 is not legally estopped from prosecuting this complaint.

It was urged that those consumers who accepted rebates for gas bought prior to June 30, 1910, under the trust referred to, became thereby participants in the arrangement as to price, so that they individually can no longer complain of the price charged provided the same conforms to the price fixed therein. The answer made to the other claim is a

sufficient answer to this. If it were not, the mere fact that the complainants accepted from the old company something which may have been either their due or a gift amounts of itself to neither an express nor implied waiver of their rights thereafter to complain, under the statute, of the price charged.

The Board must approach the issue presented by these complaints upon its merits, without regard to the propriety or impropriety of the attempted settlement of the question in 1910. Any other course would be likely to lead to a futile attempt either to restore conditions as they existed prior to 1910 or to adjust doubtful equities relating wholly to the past rather than to the future. While recognizing the force of the company's argument that, inasmuch as the present price had been in effect less than a year, there should be no interference on the part of this Board until the new price had been tried out sufficiently to prove whether or not it is a fair price, it must be remembered that the present price was arrived at manifestly as a part of an attempted compromise and settlement of a long-standing controversy. Now that this attempt has failed the matter is left, as far as the future is concerned, as though no compromise and settlement had been undertaken, and this were, as it is in fact, a new and original complaint as to price.

The Haverhill Gas Light Company supplies gas in Haverhill, serving a population of about 44,000. The works of the company are located near the heart of the city, on about an acre of land along the banks of a small stream which flows into the Merrimac. It owns an additional half-acre lot on the other side of the stream not at present used for its business. About a third of a mile away, towards the northerly outskirts of the city, it owns a lot of 5 acres, on which are gas holders of 1,000,000 and 400,000 feet capacity respectively, with some smaller structures pertinent thereto. On Merrimac Street, the chief mercantile street of the city, the company owns a brick office building which it has hitherto leased, hiring premises elsewhere for an office and supplies store. The company has avowed its intention to occupy this building for its own purposes as soon as the present lease expires.

Until 1891 the company made coal gas exclusively, but since 1893 it has made only illuminating water gas. The present owners, who acquired control in 1909, have extensively reconstructed and enlarged the manufacturing plant, discarding the old and introducing a different type of apparatus, increasing the daily generating capacity from about 840,000 to upwards of 2,000,000 feet.

The original capital stock, issued soon after the company was chartered, in 1853, was \$50,000, and this was increased in 1872 to \$75,000. This represents the entire amount of capital contributed directly by the stockholders. When the present owners acquired control of the company in 1909 it had notes outstanding of \$5,500 in addition to about \$15,000 in current accounts payable and customers' deposits. For the subsequent rehabilitation and extension of the generating and distributing plant the outstanding notes had been increased, prior to June 30, 1911, by about \$270,000. On June 30, 1911, the company's return to the Board exhibited assets amounting to \$1,219,871.17, divided as follows:—

Plant, book value .....	\$834,089.22
Certain investments, including 30 shares of its own stock .....	28,529.44
Merrimac Street office building.....	17,000.00
Cash .....	41,742.37
Other current assets .....	81,644.72
Loans to Haverhill Gas Securities Company ....	216,865.42

No deduction has been made from the book value of the plant because of property abandoned or displaced in the recent reconstruction. The relations of The Haverhill Securities Company to The Haverhill Gas Light Company, under which it owned substantially all the stock of the latter, have been described in the Board's decision relating to an issue of stock by the new company. The above item of loans represents the amount of money turned over to the Securities Company by the Gas Light Company, apparently for the purpose of enabling the former to pay interest at the rate of five per

cent. on \$500,000 of its bonds, for which the stock of the Gas Light Company was pledged as security.

From 1885, when the company began making returns to the Board, up to June 30, 1896, it paid regular dividends of 10 per cent. annually. In the next four fiscal years it paid dividends of 13, 50, 20 and 30 per cent. respectively. From 1900 to 1909, while making the loans described to the Securities Company, it declared no dividend. Since June 30, 1909, under the management of the present owners, the company has neither paid dividends nor made loans to the Securities Company, although having earnings available therefor which are exhibited later in this decision.

Owing to the inadequacy of the company's method of accounting prior to 1886, it is impossible to determine reliably the original cost of the property which it now owns and is employing for the public convenience. From as early at least as 1876 it was the practice of the company to charge the expenditures for its construction above its outstanding stock to profit and loss, paying for all improvements out of earnings, so that when its first return was made to this Board, in 1885, the plant was carried at a book value of \$75,000. Testimony was submitted at the hearings that the gross amount expended for construction prior to that year was \$196,500. The available surplus earnings shown by the returns from 1886 to 1909 indicate that in those years approximately \$380,000 was expended for construction. During the two following years the present owners claimed to have expended over \$280,000 in the reconstruction and extension already referred to. These figures indicate a total original expenditure of over \$850,000 for construction in the nearly sixty years of the company's existence, but in order to ascertain the original cost of the present plant there must necessarily be deducted the cost of buildings, mains and apparatus torn down, taken out or abandoned. The amount of this deduction is unquestionably substantial. Indeed, the witnesses for the company estimated that the reproduction cost of the property discarded in the recent reconstruction of the works would be \$75,000. The total deduction throughout the

company's history must greatly exceed this figure but cannot now be ascertained.

In some cases and under some conditions the market value of a company's stock may offer some indication of the actual value of its property. In this instance, however, the capital stock of the company has been withdrawn from the market ever since it became, in 1899, the property of The Haverhill Gas Securities Company, and was pledged as security for that company's bonds. The present owners, in order to acquire this stock, which constituted the entire assets of the Securities Company, expended in 1909, as the evidence showed, for all the stock and bonds of the latter company, \$602,523. There is no other indication of the market value of the Gas Light Company's stock.

It is interesting to note, as affecting local official opinion of the value of the company's property, that in 1909 the city assessors valued its entire plant for the purpose of taxation at \$458,200. In 1911 this valuation was increased to \$665,825. More than \$150,000 of this increase was due to a re-valuation by the assessors of the land and buildings, as against an expenditure therefor by the company during the period of less than \$60,000. This valuation appears to have yielded to the city for taxes in 1911 substantially \$13,000, which is the amount which the so-called "franchise and consent" granted by the municipal council to The Haverhill Gas Company in 1910 stipulated should be paid by the company in 1911. How far this fact may have influenced the assessors must be a matter of conjecture only. The assessed valuations were not discussed at the hearings, nor were the assessors called upon to testify as to the basis for their figures.

Much of the time of the hearing was taken up in an attempt by each side to determine the present value of the company's property. Two witnesses for the company submitted valuations based, with the exception of the two tracts of land containing the generating and storage plant, which were taken as valued by the city assessors, upon their judgment of the present market value of the land and buildings, and the cost to reproduce new, item by item, all the buildings and other structures, machinery and apparatus, mains, meters

and services as they were when reconstruction began, and which were to be retained in use after reconstruction, with a deduction from such cost of the estimated depreciation which each item had suffered. Another witness testified generally as to the structural value of the plant in 1909, employing the assessors' valuations for the land and without reference to the proposed reconstruction. These valuations were, respectively, \$580,341, \$543,563 and \$617,430, and included varying sums for engineering, interest during construction, contingencies and omissions, figures for these items being in the first total named \$96,724, in the second \$121,687, and in the third \$56,000. All of these valuations employed figures for land and for some other items which the records show to be much in excess of their original cost. It is also true that the company's property seems to have been developed without distinct expenditure for engineering and kindred items, or, if any sums have been so paid, they have been reckoned as a part of the cost of gas and been provided out of income. To each of the totals named above were added \$50,000 for working capital, and to the second, \$29,613 more was added for supplies and materials. The total amounts thus obtained are in consequence \$630,341, \$622,176 and \$667,430, respectively. The last figure includes the property abandoned in the reconstruction and valued by the company at \$75,000, and if it be corrected accordingly this total will be \$592,430. Between 1909 and 1911, the period of reconstruction, the company added to its plant accounts \$282,535, included in which is a liberal amount for distinctively engineering services. If this expenditure is added to the amounts submitted by the company's witnesses, corrected as already described, their total figures will become \$912,876, \$904,711 and \$874,965, respectively.

The valuation submitted in behalf of the city was \$464,741, in which is included an item of \$26,306 for engineering, interest, etc. It was based on what a purchaser, wishing to do the business and having the right to do it without competition, would pay for the property rather than build a new plant. In consequence, certain items in the company's schedule of its property do not appear in the city's valuation at



all. The land valuation is not of the land actually owned and occupied by the company, but the probable cost of land suitable in size and location for a gas works, but away from the heart of the city. The valuation is also made as of June 30, 1911, when the reconstruction and extension of the plant had been substantially completed. To this valuation was added the sum of \$20,000 for working capital, but a deduction of \$36,172 was also made from the figures otherwise arrived at because of the claim that the company's generators and holders exceed present needs. This makes the final figures submitted in behalf of the city \$448,569.

Aside from the differences between the two valuations indicated by the items and theories stated, there are important differences in the unit costs upon which the valuations of the buildings, machinery, pipes and labor were computed. Assumption as to the weight of pipes underground, the size of service pipes and the allowance for depreciation of the various parts of the entire plant varied materially. These differences of detail, owing to the multitude of items, lead inevitably to very substantial differences in results. The city's estimate of the replacement cost of the mains is low in comparison with the recent experience of other companies under the Board's supervision, but the character of such underground construction, long since buried, must be to some extent matter of conjecture rather than demonstration.

The valuation made for the city seems to have been affected by an opinion that the works are poorly located for that development which the future may require, and to allow less than the otherwise fair value of the present generating plant because it is too large for the present needs. The reasons given, however, for continuing to use the present site show clearly that no change of location can advisedly be made until long after the time to which rates now made will apply. The Board cannot, in the general interest of consumers, discourage the reasonably liberal provision for the future which this company seems to have made, neither can it concede the company's claim that franchise or going-concern value should form a part of that property on which a reasonable return should be based.

In this connection it may be noted that the present owners had no detailed appraisal made of this property before they purchased the stock and bonds of the Securities Company. They are a firm whose wide and varied experience in the purchase, construction, management and sale of similar properties is well known. One of its members testified that it was not the practice of the firm to make detailed appraisals before purchasing such properties or the securities representing them, and that, in forming their judgment of what they were willing to pay therefor, certain general factors, such as the output, earnings, territory supplied, experience of company, what might be done in developing the property, etc., were employed, and seemed to him more reliable than a detailed appraisal, although in this State probably a purchaser would also have to consider how large a rate of return he would be allowed to earn and pay on his investment.

The company's returns exhibit its annual operating expenses in detail, as required. It was contended in behalf of the complainants that the operating expenses as shown prior to the advent of the present owners and the reconstruction and extension of the plant are of little value in determining what may be reasonably expected in the future. This was especially urged as to the cost of manufacture, because of the increased economy and efficiency to be secured by the changes in method and in the works equipment. The city's witness testified in detail as to what, in his judgment, would be the reasonable expense of operating the plant, exclusive of repairs, renewals, maintenance and depreciation. In this estimate he omitted any allowance for maintaining gas arcs on the premises of private consumers and naphtha lamps on the streets on the ground that these matters were not a part of the company's public duty, and should not be considered in determining the cost of the gas supplied to its customers generally. For similar reasons he allowed but one-half cent per thousand cubic feet sold for the cost of selling and caring for gas stoves. He also omitted any allowance for rent of offices, because the company owned a suitable office building, or for bad debts, because this item he believed to be properly a deduction from income, and in any event to be in practice

more than offset by the loss of prompt payment discounts. In his judgment the company's actual cost for management and office expenses was too high. His total computation of the reasonable cost at the customer's burner, exclusive of repairs, renewals, maintenance and depreciation, was 46 cents a thousand. To this he added 11 cents to cover the items excluded. Of this 11 cents he testified that 3 cents should cover ordinary repairs and renewals as distinct from maintenance and depreciation.

Computations submitted by the company for another purpose used an annual allowance for depreciation of 6.6 cents. It was urged in final argument for the complainant that this was a suitable allowance for depreciation, and that the reasonable cost at the burner should not exceed 55 cents a thousand cubic feet.

In behalf of the company an estimate made in 1910 for the guidance of the local manager as to what might reasonably be expected was submitted. It was made up from a minutely itemized division of the operating expenses. The cost at the burner based on this estimate was 56.97 cents, exclusive of repairs, renewals and maintenance. These items were estimated at 3.07 cents and a further allowance for depreciation was estimated at 8.5 cents. If the company's estimate for the items omitted or reduced by the city's witness had been used by him, his figure of 46 cents would have been 59.04. On the other hand, had his views with respect to the contested items prevailed with the company, its estimate of 56.97 would have been cut to 43.93.

The year ending June 30, 1911, was occupied with the reconstruction of the company's works and distribution system, and therefore may possess in many respects abnormal features, yet its experience during this year is of some value as bearing upon the reasonable cost of the gas supplied by it. The year ending June 30, 1912, represents another full year's operation, under more normal conditions. The total operating cost at the burner in these two years was, respectively, 70.99 and 62.99 cents, and these figures are likely to be somewhat increased in the current year by the advance in price of oil. Included in these figures are expenditures for

repairs and renewals of 4.51 and 6 cents respectively. For both of these years there is included in the office expense an item for rent of offices which exceeds somewhat the rent received for the office building owned by the company already described. With this item excluded, as was suggested by the city, 1.18 and .96 cents respectively would be deducted from the figures just given. Such of these expenses as are incidental to the company's main purpose, or may tend to promote the interests of its consumers, may properly be included in a reasonable operating cost.

In order that the company's actual operations may be more clearly understood, its gross earnings from all sources and its net earnings available for depreciation, interest and dividends for the past five years are given below, together with its output. The gross and net earnings for 1910 and 1911 have been corrected by \$19,345.24, the amount of the rebate actually paid in the second year to make the reduction in price to 90 cents effective as of July 1, 1909. Certain extraordinary expenses incident to this controversy have not been considered in exhibiting the net earnings for 1911 and 1912. With these changes the result is as follows:—

YEAR TO JUNE 30—	Gross Earnings.	Net Earnings.	Total Sales of Gas (Feet).
1908. . . . .	\$197,457 <sup>1</sup>	\$56,347	187,501,000
1909. . . . .	203,389 <sup>1</sup>	61,038	191,448,800
1910. . . . .	197,070 <sup>2</sup>	41,668	203,362,600
1911. . . . .	208,695 <sup>2</sup>	56,663	214,149,300
1912. . . . .	215,983 <sup>2</sup>	64,226	235,160,500

The consideration of depreciation raises some of the most subtle and complex questions incident to rate making, and, while it has been extensively discussed and numerous theories advanced, the Board is not aware that any satisfactory rule for its determination, applicable to companies generally, has been laid down. The problems which it involves are necessarily individual to every company, although affected by general considerations. It has an important relation to the

<sup>1</sup> Maximum net price for gas, \$1 per 1,000 cubic feet.

<sup>2</sup> Maximum net price reduced to 90 cents, as of July 1, 1909.

<sup>3</sup> Maximum net price reduced to 85 cents on July 1, 1911.

physical condition and value of the property, which is entitled to a return and to the provision in future earnings, when fixing a reasonable price. Assuming the property provided by the stockholders has been kept in good condition, any future depreciation allowance is the measure of those demands which intelligent management and a wise foresight find necessary for maintaining that property at its normal efficiency. Anything less than this will tend to injure the stockholders; anything more may unjustly burden consumers. In the ordinary conduct of a company, to correctly deal with this subject requires of the manager a complete familiarity with all its property, its condition and its relation to the prospective demands of the community, an adequate knowledge of and receptive interest in the progress of the art, and the exercise of his best ability in all these directions. The problem is primarily for the manager rather than with the engineer or accountant, although both of these may contribute their aid. All parts of a plant, excepting land, suffer constant depreciation, though it may be imperceptible to the untrained observer. Provision for depreciation is only designed to keep a plant good. It is as necessary a part of the cost of carrying on the business as the expense for coal or wages. Although it was this item upon which the parties were most nearly in accord, the Board hesitates to fully accept their view. In view of the constantly changing ratio of output to plant value, it is difficult to adopt any rule which fixes a certain definite amount per thousand feet for a proper depreciation charge, which may be applied to all companies or to the same company at all times. Moreover, the amount of this charge may be materially affected by the degree of liberality with which repair accounts are treated.

In the company's experience no uniform or consistent rule has been followed. If 6.6 cents throughout the company's history be used, over \$170,000 would be required for the purpose up to June 30, 1911. If the claim that this is too low be recognized, and 8 cents be adopted, the amount would be \$250,000. Assuming gross construction charges of substantially \$850,000, as before described, the present value based on cost would be that amount less the aggregate for depreciation. All these propositions have had weight in con-

sidering the allowance for future depreciation. Under all the circumstances, the Board believes that the company can well afford to qualify the emphasis placed upon this item until at least it has begun to more positively reap the benefit of its recent reconstruction expenditures and other activities, and its output is closer to the present capacity of the plant.

The company contended that a fair price should cover its operating expenses, an allowance for depreciation and a fair return upon the value of its property at the time the controversy arose, including its franchise and privileges; that such value may be proved by actual cost and reproduction cost of its property and amount and market value of its stock and bonds; and that the fixing of a price which will not afford a fair return upon such value amounts virtually to a taking from its owners. Taking its actual cost of 62 cents, allowing 8 cents for depreciation and a return of 22 cents, or 6 per cent. on \$900,000, for the value of its property, and annual sales of 250,000,000 feet, the company claimed that a fair present price would be 92 cents, and that the reduction which might come with an increased output was already anticipated in the price of 85 cents which it had already offered.

The city urged that the fair price depends upon (1) the cost at the burner (including a proper allowance for repairs, renewals and depreciation), and (2) a capital charge based upon the capital stock duly issued, and not necessarily upon the value of the property owned by the company. Using its figures of cost already stated, and allowing  $3\frac{1}{2}$  cents a thousand, or a return of 10 per cent. upon the capital stock outstanding, it suggested that 60 cents was a fair and liberal price.

The questions of law and public policy raised by these claims are of great importance, and were argued on both sides with conspicuous ability.

It will be noted that the city's claim makes no provision for a return upon the debt incurred for the admittedly necessary reconstruction and extension of plant by the present owners. A fair allowance for this, however, fails to reconcile the difference between the parties. This difference seems to rest primarily on a radically different conception of the law

applicable to a case where there is such an exaggerated disparity of capital stock to assets, and in which these assets have been accumulated in such large measure from earnings. Based only upon the existence of the unusual surplus and the comparison of its former prices with those now prevailing, the city alleged that the company for many years charged excessive prices, and that this extortion should not go unpunished. The company denied that its prices had been excessive, and claimed that its surplus was built up because the company refrained for many years from dividing all the earnings which might have been legally and properly declared in dividends.

It is perhaps idle now to speculate upon the motives of the original owners. So far as their acts may be material it seems probable that they paid in dividends all that they deemed it expedient to distribute, and that they maintained as high prices as their business prudence, tempered by public opinion and prices charged elsewhere, dictated, with but a dim perception of the obligations resting upon them as purveyors of a public service. But in fixing a price for the future the Board cannot undertake to reconstruct the past according to some theory which might have maintained a more equitable relation between the company and its consumers.

Much was said of Massachusetts' policy with respect to public regulation, and as this policy is disclosed primarily in legislative acts it is perhaps desirable to review briefly the laws by which this policy has been expressed. The special act of 1853, by which this corporation was chartered, expressly provides that "no share . . . shall be issued for a less sum or amount to be actually paid in on each than the par value of the shares which shall be first issued." In 1855 a general law was enacted under which gas light companies might be organized in any city or town, "provided that in such towns and cities of this Commonwealth as there may be existing gas companies in active operation, no additional similar corporation shall be organized unless the parties therein are inhabitants of said town nor unless the existing corporation shall have realized an annual yearly dividend on their capital stock of seven per cent. for a period of five

years," a provision which remained in force until 1870. In 1868 gas light companies were expressly prohibited from declaring "any stock dividend" or "dividing the proceeds of the sale of stock among its stockholders," or creating "any additional new stock" or issuing "certificates thereof . . . unless the par value of the shares so issued is first paid in cash to the treasurer of such corporation,"—these provisions still remaining in force unchanged. In 1873 any additional shares of stock were required to be sold at public auction, and, if a premium were realized, only such a number of shares were to be sold as would produce the necessary amount. In 1885 this Board was established, with authority, upon complaint, to order reductions in the price of gas, and upon appeal to prevent a second gas company from laying pipes in the streets of a city or town in which a gas company exists in active operation, to compel a supply and to require annual returns from the companies for the purpose of disclosing their condition and operations. In 1891 cities and towns were authorized to acquire municipal gas plants, but a municipality voting so to do was compelled to purchase any existing plant within its limits at the option of the owners thereof, at "its fair market value for the purposes of its use, no portion of such plant to be estimated, however, at less than its fair market value for any other purpose, including as an element of value the earning capacity of such plant based upon the actual earnings being derived from such use at the time of the final vote of such city or town to establish a plant, and also any location of similar rights acquired from private persons in connection therewith, plus the damages suffered by the severance of any portion of such plant lying outside of the limits of such city or town. . . . Such value shall be estimated without enhancement on account of future earning capacity or good will or of exclusive privileges derived from rights in the public streets." The provision relating to present earning power as an element of value was stricken out in 1893, and that relating to "locations of similar rights" in 1903, but otherwise this law remains substantially unchanged. In 1894 the so-called "anti-stock watering" law was passed, whereby a gas light company may issue only "such amount of stocks as . . . the board of gas and electric



light commissioners . . . may from time to time vote . . . is reasonably necessary for the purpose for which such issue . . . has been authorized"; and additional stock, instead of being sold at auction as provided in the 1873 act, was to be offered to the stockholders "at not less than the market value thereof at the time of increase, to be determined . . . by the board of gas and electric light commissioners . . . taking into account previous sales of stock of the corporation and other pertinent conditions." This last provision was changed in 1909 so that the price at which an increase of stock is offered to the stockholders may be fixed at not less than par by the directors, "unless the board is of the opinion that such price is so low as to be inconsistent with the public interest," in which event the Board may fix the price.

This review of the acts of the Legislature indicates an early recognition of the business as a virtual monopoly, and imposes upon it a considerable measure of restraint, supervision and regulation. The legislative purpose to prevent the issue of stock for anything besides cash, or, in the earlier years, property actually contributed by the stockholders, is plain. The prohibition of stock dividends and the provisions for the sale of additional stock at auction, or its distribution to the stockholders at its market value, or, as now, at a price not so low as to be inconsistent with the public interest, are also indications of an early and consistently maintained purpose to prevent surpluses accumulated out of earnings becoming the basis, directly or indirectly, for the issue of stock.

On the other hand, it is equally to be noted that no specific limitation has ever been placed upon rates or dividends with a view possibly of rewarding zeal in the skillful and intelligent conduct of the business, and imposing upon the directors, subject to the check of public opinion, a consideration of the welfare of the shareholders and the equities of consumers in the surplus to which they had contributed. As market value is influenced by the rate of dividends declared, the requirement that additional stock shall be issued at a premium seems also an acknowledgment that dividends may be paid on the par of the stock at a rate in excess of the return ordinarily required by investors for the use of their money.

The fact that this last feature of the law has been preserved long after an express authority was granted to this Board to reduce the price of gas is significant, too, of a legislative view that these two methods of regulation are not inconsistent. This body of legislation is plainly designed to allow no capital stock to be issued save for physical property necessary for proper corporate purposes, to keep the authorized increase of capital stock as low as market and other conditions warrant, to compel publicity of corporate affairs, and, on the other hand, to secure the community from the wasteful effects of competition by the exclusion of others from territory already adequately and efficiently supplied, and to provide, upon complaint, a compulsory reduction in price, and so to create a status favorable to low rates and adequate service. There is nothing in this legislative policy which violates or countenances the violation of the company's constitutional right to "a fair return upon the value of that which it employs for the public convenience."

In deciding a complaint as to price, the Board is bound to consider all the facts which may seem to have a bearing upon the company's affairs and the way in which it performs its public duty, but the Board is not, in its judgment, in the consideration of a proper return, required to exclude any property of the company necessary for the welfare of the public and actually used therefor, although it may have been provided by the investment therein of surplus earnings accumulated in past years; nor is it required, in order to escape the charge to confiscation, to ignore the company's history, the limitations, legal or otherwise, under which its property has been acquired, or, in effect, to capitalize that property upon the same basis as if it had reached its present status under different conditions.

In view of the fact that this company has borrowed its present floating debt at an average rate not exceeding  $4\frac{1}{2}$  per cent., and stocks of successful gas companies in this State are continually traded in on nearly as favorable basis, the Board is clearly of the opinion that the allowance of a return upon the total investment of less than 6 per cent. is not subject to the charge of confiscation.

The Board has given, so far as it is aware, careful attention to all of the facts and theories urged by the parties. It has reached its conclusion in the light of all the facts and considerations set forth. The issue is the reasonable and fair price, and the soundness of the Board's decision must rest not in a mathematical demonstration but in the correctness of the Board's judgment upon all the facts. The several valuations set forth by the parties with such "delusive exactness," to borrow Mr. Justice Holmes' recent words, should be of itself sufficient to show that rate making has not yet achieved the position of an exact science. The Board believes that the price hereinafter named is fair and reasonable, and will be sufficient to cover all reasonable operating costs, a reasonable allowance for depreciation and a fair return upon the value of the property which the company is actually and necessarily employing for the public convenience.

The quality of service was not an issue raised by the complaints, but considerable stress was given at the hearing to the actual and the proper gas pressure, candle-power and purity, the city claiming that by reason of certain practices of the present management the recent reductions in price had not correspondingly benefited consumers.

It appears not only by the evidence submitted by the company, but by the Board's tests, that the company has been conforming to the established standards, and has in fact been supplying a gas of purity and illuminating power above the requirements of the law. The criticism about pressure was based not on individual complaints of poor service, but on the theory that the pressure should not exceed one and one-half inches. The Board had occasion in 1908 to consider a similar claim with respect to a company somewhat similarly located so far as the topography of the territory supplied is concerned. It reached the conclusion in that case that while an absolutely uniform pressure that would enable the customer to use his gas under the most efficient and economical conditions is highly desirable, yet that in most cases it is not wholly practicable without an expense out of all proportion to the benefits gained. It is, however, the duty of the company to maintain as nearly as possible such a pressure at

a customer's service as will secure to him reasonable efficiency in the use of the gas he buys, and, if it fails to do so, any customer may bring this fact to the attention of the Board, which will be prepared to exercise its authority to correct such condition.

The Board recommends that on and after the first day of February next the net price for gas sold by The Haverhill Gas Light Company shall not exceed 80 cents a thousand cubic feet.

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ATTLEBOROUGH PETITION.

*Decided February 7, 1913.*

**Reduction of Rate—Rate of Return—Surplus Profits—Unearned Increment—Skill and Foresight—Profits Due to Growth of Community—Depreciation—Effect of New Construction on Rates—Interest During Construction.**

Upon complaint as to the price of \$1.10 per thousand feet charged for gas by The Attleboro Gas Light Company Corporation, it appeared that on account of the largely increased business, new works were to be built at a new location and the present plant abandoned.

*Held:* That, although it is everywhere accepted that a company of this character is entitled to a reasonable return upon the value of the property which it is actively and necessarily employing for the public convenience, nevertheless, the rate which constitutes such a return must evidently be affected by the time, place and conditions under which the question arises; nor is there any generally accepted and adequate rule by which the value of the property for rate-making purposes must be determined.

That, where a large percentage of the plant investment appears to have been procured out of profits, or where exceptionally large dividends have been declared, a suspicion naturally exists that prices have been unreasonably high and a belief arises that the consumer has therefore acquired some equitable interest in the surplus. A company's surplus is commonly based upon managerial skill and foresight, needlessly high rates, or the general prosperity of the community, or, more frequently, upon two or more of these combined.

That the investment out of profits which a public service company has been able to make solely through the general growth of the community has many attributes similar to the unearned increment in the value of its real estate, upon which it is not entitled to a return. It is difficult to see why a reasonable rate of return, based upon the full value of a company's property, should not be affected in the same manner by that portion of the investment which may be termed the unearned increment in its profits as by the unearned increment of value in its real estate. In other words, the reasonable rate of return upon the Company's entire investment is lower

where an appreciable part of the investment is derived from the two sources described, than where it is derived entirely from the contributions of the shareholders.

That the large depreciation involved in the part of the plant to be abandoned has been already amply provided for out of the prices heretofore charged and the income already obtained thereby. Provision in any future price for depreciation may properly, therefore, be largely confined to the mains and to the new works not yet built.

That the time likely to be consumed in the new construction, the changes likely to occur in the volume of the business, the economies available through the operation of the new plant, all affect the question of a reasonable return. Whether the funds necessary for the new construction be obtained through loans or by the issue of stock, the carrying charges for the new investment should be met out of income and provided for in the price fixed, otherwise, the necessary funds might not be readily obtained.

That a charge of \$1 per thousand feet is sufficient to yield, in addition to reasonable operating expenses, a suitable allowance for depreciation and a reasonable return upon the value of the property actively and necessarily employed for the public convenience.\*

This is a complaint in writing, under section 34 of chapter 121 of the Revised Laws, by the selectmen of the town of Attleborough, of the price of gas sold and delivered by The Attleboro Gas Light Company Corporation.

After due notice, public hearings, as required by law, were held in Attleborough, at which the selectmen and the company were represented by counsel.

On July 1, 1911, in response to a request of the selectmen, the company reduced its maximum net price from \$1.20 to \$1.10 per thousand cubic feet; but the selectmen were not satisfied with this reduction, and instituted this complaint, which is the first proceeding of this kind brought against this company since the Board was established.

The company was organized in 1898 under the general law, and on Jan. 1, 1899, took over the property and business of an unincorporated association which since 1867 had conducted the gas business in Attleborough. Its original capital stock, of the par value of \$46,400, which was the same as that of the association which it succeeded, was issued with the approval of this Board, as required by law. In 1906, to provide for the cost of certain additions to plant, it was authorized to increase its capital stock by the issue of 116 shares, each of the par value of \$100, at the price then fixed of \$225 a share, yielding in all the sum of \$26,100.

\*Editor's headnote.

The company began in 1899 with a maximum net price of \$1.50 a thousand; this was reduced to \$1.40 in 1903, \$1.30 in 1906, \$1.20 in 1910 and to the price already noted in 1911. Its output has increased from 15,346,000 cubic feet in 1899 to 57,326,000 in the year ending June 30, 1912.

The leading industry in the town is the manufacture of jewelry whose processes make a liberal use of gas, giving a steadiness of consumption which is of great value to the company and has materially contributed to its prosperity. The town of Attleborough had a population in 1900 of 11,335 and in 1910 of 16,215, and, although the company's distribution has been practically confined to the largest village, the sales per capita of the entire town have more than doubled during the decade.

The company's works occupy a tract of land containing nearly two and one-half acres near the mercantile and manufacturing center of the town, not far from the railroad, but without any track connection therewith. A portion of this land not required for the gas business has been rented to persons who have erected dwellings and shops thereon. The company also owns a tract of vacant land on the outskirts of the village, between the railroad and Ten Mile River, containing about six and one-half acres, purchased in 1905 with a view of ultimately locating the works there.

The old association, which for so many years under the name of the Attleboro Gas Light Company carried on the business as the predecessor of the present corporation, was organized in 1859, and took over the property and business of a company earlier organized which had become bankrupt. It began with a capital stock of \$6,000, very soon increased to \$11,600, which was further increased in 1886 to \$23,200 and in 1889 to \$46,400. A part of this capital increase was made through a stock dividend, which, in an unincorporated association, was not specifically forbidden by statute.

Since January, 1899, although deductions amounting to \$37,732 have been made through charges to depreciation, its books show a net increase in plant value, on account of expenditures for additions, of \$89,682, or \$63,582 in excess of the amount realized from the additional capital stock. Its

current assets have also increased by \$17,655, and on June 30, 1912, the book value of its plant was \$157,372.89, with current assets of \$35,759.47, or a total of \$193,122.36, against which it had outstanding no liabilities other than its capital stock. During this period it has paid regularly annual dividends of 12 per cent., and in 1910 an extra dividend of 10 per cent., claimed to represent income accumulated during several years from certain portions of land owned by the company, not used in its business, and leased to others.

The new corporation being so closely identified with the old association that the two constituted virtually one continuous concern, the features of their financial history to which reference has been made led in the hearing to a consideration at some length of the question of a reasonable return. The proposition so clearly stated by the federal Supreme Court that a company of this character is entitled to a reasonable return upon the value of the property which it is actively and necessarily employing for the public convenience has been everywhere accepted as just and reasonable. For fundamental reasons no statement of equal authority has been laid down as to the amount, rate or percentage which constitutes such return, since it must evidently be affected by the time, place and conditions under which the question arises. Neither, so far as we are aware, is there any generally accepted and adequate rule by which the value of the property for this purpose must be determined.

Since a company must make rates in advance, in attempting to provide for dividends and a reasonable strengthening surplus, it is impossible to see clearly and with certainty at the time what the company's business may develop. Surplus earnings so obtained have, however, quite different characteristics from those where rates are made in advance for the express purpose of providing out of profits plant investment which otherwise would come from the contribution of the shareholders. A prudent management will seldom distribute in dividends all of a company's apparent profits. Where in a brief term of years a large percentage of the plant investment appears to have been procured out of profits, or exceptionally large dividends have been declared, a suspicion

naturally exists that prices have been unreasonably high, and a belief arises that the consumer has therefore acquired some equitable interest in such surplus.

Where a company performs a public service with a proper conception of its public duty, surpluses of this character are not likely to develop. While an investment made for the public benefit may prove of public advantage from whatever source it is derived, no company ought to profit by conduct based upon a false notion of its public relations. These statements must of course be taken as applying to an actual and not a merely apparent surplus, although this distinction can often be correctly made only by a thorough knowledge of the company's affairs. While such surplus may be due in some measure to skill and foresight in the management, it may be and often is due in part to the general growth and prosperity of the community in which the company is located. The value of the former to the community may well be liberally recognized, but some recognition of the latter may with equal justice be accorded the public. This company has grown and prospered along with and in large measure because of the growth of the community in which it is located. While it has been prudently and skillfully managed, its officers would doubtless concede that a portion of its prosperity is clearly the outcome of the prosperity of the town in which it is located.

There is a growing recognition of the truth of the proposition that a public-service company is not entitled to a return upon the unearned increment in value of its real estate, but investment out of profits which it has been able to make solely through the general growth of the community which it serves has many similar attributes. It will commonly be found that a company's surplus is based on managerial skill and foresight, needlessly high rates or the general prosperity of the community, or, more frequently, to two or more of these combined; and while it may be difficult to determine what proportion is justly attributable to any one of these causes, there can be little question that the general growth of the community is an important factor. Whether because of a recognition of this principle or due to some other, it has been



unlawful for many years in this State for a corporation of this class to represent its surplus in new capital by a stock dividend. It is difficult to see why the reasonable amount of return or the reasonable rate of return based upon the full value of the company's property should not be affected in the same manner by that portion of the investment made from what may be termed the unearned increment in its profits as by the unearned increment of value in its real estate; in other words, the reasonable rate of return upon a company's entire investment is lower where an appreciable part is derived from the two sources described than where it is entirely derived from the contributions of the shareholders in their payments for its stock.

A reasonable and fair provision for depreciation is a matter of so much importance that the Board has given special consideration to the claim of the company that 4 per cent. upon its entire plant ought to be allowed for this item. Taking the total valuation of the company's plant as shown upon its books, and which, in view of the company's methods of accounting, may not be an unreasonable figure, we find that this may be divided into four items: land, mains, meters and other structures. In a growing community like Attleborough, land centrally located, like that of this company, can hardly be considered as depreciating at an annual rate of 4 per cent. There are indications in the company's records and accounts that it has materially increased in value since it was purchased. In view of the well-known long life of cast-iron mains, there seems to be a general concensus of engineering opinion that, where such mains are kept in proper repair, a depreciation allowance of less than 4 per cent. is ample for that part of the company's plant. Liberal provision for renewal of meters condemned or otherwise lost, as well as ordinary repairs, has been provided for through operating costs. If the works are to be built on a new location and the present plant or works abandoned, depreciation of that portion of the company's investment will be rapid and complete. Even then the fair value of the remaining plant will substantially exceed all the investment made by the stockholders. It is therefore difficult to see why

the large depreciation now impending of this part of the plant has not already been amply provided for out of the prices heretofore charged and the income already obtained thereby. Provision in any future price for depreciation made under the conditions now prevailing in this company may properly, therefore, be largely confined to the mains and the new works not yet built.

In 1905, when the six and a half acre tract already mentioned was bought, it was plainly intended for a new location for the gas works. The records of the corporation show that, after a pretty careful study of all the questions involved, the directors decided at that time that it would be advisable thereafter to limit the expenditure upon the works in their present location by their opinion that when a consumption of 50,000,000 feet annually should be attained the works could no longer be economically operated on the land then owned, and it would be necessary to remove them to a more favorable location. For this reason the six and a half acre tract was immediately bought. The annual sales at that time were about 25,500,000 feet. The 50,000,000 output has been attained during the pendency of this petition, earlier, doubtless, than was originally anticipated by the directors. Under existing conditions it is doubtful if the business can be conducted at the present works with that economy which the public interest requires.

Plans for the new works and estimates of their probable cost have been made. In view of the economies to be ultimately obtained, it is for the advantage of the public and the company that in the construction of these works suitable provision for the future be made, and that their capacity should exceed present demands. The estimated cost for this new construction is about \$250,000, or more than four times the present capital stock. The actual cost may be more or less than this amount. Whether the funds necessary for the purpose be obtained through loans or an issue of stock, the carrying charges for the new investment should be met out of income. Unless provision for this is made in the price, the necessary funds may not readily be obtained.

Conditions like these are forced upon nearly all companies, developing, however, only at long intervals, but while their influence is felt, the problem of a reasonable and fair rate is surrounded with unusual difficulties. The time likely to be consumed in the new construction, the changes likely to occur in the volume of the business, the economies available through the operation of the new plant, all to a degree uncertain in their character, affect the question and must be carefully considered.

In the determination of the price but little consideration has been given to the claim that the pay of certain officers of the company might be reduced to secure the reduction; other more important questions have engrossed the Board's attention. A study of the company's history, as revealed in its corporate records, indicates that its affairs have been managed with fidelity, economy and integrity, and that there is no sufficient reason to assume that the public has suffered from extravagance of any kind. Notwithstanding the fact that stock dividends to a certain extent may have been made when such practices were not uncommon, and at a time when they were not forbidden by law, its capital in proportion to its business ranks lowest of the gas companies in the State. In other words, it requires a smaller portion of its price to pay the same rate of dividends than any other company—a fact contributing in a marked degree to its ability to maintain the price named.

The Board believes that the price hereinafter named is sufficient to yield, in addition to reasonable operating expenses, a suitable allowance for depreciation and a reasonable return upon the value of the property actively and necessarily employed for the public convenience.

A portion of the hearings was devoted to a criticism of the pressure maintained by the company, and its method of enriching and purifying its gas. These questions may indirectly affect the value of the gas and are therefore of some importance to consumers. The gas supplied by the company, however, conforms to the established legal standards, and there is nothing in the pressures generally maintained which is abnormal, or likely, in the Board's opinion, to work to the

disadvantage of a consumer who is reasonably careful in the use and adjustment of his gas-consuming devices. It is the duty of the company to secure and maintain a reasonably even and moderate pressure throughout its mains, and if it fails to do so, any customer may bring the fact to the attention of the Board and have his complaint promptly considered.

The Board recommends that on and after the first day of March next the net price for gas supplied by The Attleboro Gas Light Company Corporation shall not exceed \$1 a thousand feet.

## NEW JERSEY.

### Board of Public Utility Commissioners.

#### IN THE MATTER OF HEARING AS TO WHETHER THE EXISTING SCHEDULE OF RATES OF THE PUBLIC SERVICE GAS COM- PANY, FOR GAS, IS JUST AND REASONABLE.

*Decided December 26, 1912.*

#### ABSTRACT OF THE REPORT.

The Board determines the existing rate of \$1.10 per thousand cubic feet of gas with a discount of 10 cents per thousand cubic feet for prompt payment to be unjust and unreasonable.

It fixes in place of the rate of \$1.10 per thousand cubic feet, with a discount of 10 cents per thousand cubic feet for prompt payment, a charge of 90 cents per thousand cubic feet to be just and reasonable and requires the Company to put such charge into effect in the "Passaic Division" on and after February 1, 1913.

The municipalities included in the "Passaic Division" and affected by the order of the Board are the cities of Paterson and Passaic, Acquackanonk Township, Hawthorne Borough, Saddle River Township, Prospect Park Borough, Haledon Borough, Garfield Borough, Lodi Borough, Nutley Town, Little Falls Township, Ridgewood Village, Glen Rock Borough, Wallington Borough and Totowa Borough.

#### The Board's Recommendations.

The Board recommends that the Company set the same reduced rate of 90 cents per thousand cubic feet throughout all of the other divisions of the State, where now it is exacting the rate of \$1.00 net per thousand cubic feet.

It makes this recommendation as to territory not embraced in the "Passaic Division" because under the statute it can only issue an order fixing rates "after hearing, upon notice."

It is also recommended that the schedule for quantitative discounts be readjusted in accordance with the above rate of 90 cents per thousand cubic feet.

#### Rejects Company's Proposition.

At the outset of the proceeding initiated by the Board, the Public Service Gas Company and Public Service Electric Company submitted a proposition to the Board. This proposition contemplated in the case of the Gas Company the putting into operation a uniform flat rate of \$1.00 as of January 1st, 1912, and on January 1st, 1914, the reduction of this rate to 95 cents and on January 1st, 1916, the further reduction to 90 cents. It further contemplated in the case of the Electric Company as of January 1st, 1912, the adoption of the same schedule of discounts from the base rates put into effect in New York by the Edison Company.

The proposition was submitted as an entirety with regard to the two properties—gas and electric.

The Board did not act upon the proposition because it tied up two rates, one for gas and the other for electricity, having no relation, and because to accede to it meant the fixing, without investigation, of rates for a period of five years.

#### Value of Tangible Property.

The Board finds the value of the tangible property of the Company in the Passaic Division, as of October 1st, 1911, to be,

Land .....	\$ 111,160
Manufacturing plant .....	1,161,550
Distributing system .....	2,465,270
Working capital .....	250,000
	<hr/>
	\$3,987,980
Less sum required to adjust figures to July 1, 1911.....	62,000
	<hr/>
	\$3,925,980
Less depreciation .....	200,980
	<hr/>
	\$3,725,00

For these items a value of \$5,818,940 was claimed by the company.

#### Value of Intangible Property.

The Board allows for organization, franchises, cost of establishing business, etc., \$1,025,000.

The Company claimed allowance for these items in the sum of \$3,090,551.

#### Total Value.

The total value as found by the Board is \$4,750,000.

The total value as claimed by the Company was \$8,909,491.

#### No Allowance for "Good Will."

No allowance is made for good will. It seems well settled that where a particular service is furnished by only one Company within a given area, the option of patronizing a rival public concern is absent; and that under such circumstances, good will, or the value of voluntary patronage where a competing service is available, does not exist.

#### "Going Concern Value" Allowed.

However the various conceptions of "Going Concern Value" may fail of precise coincidence, they all have a common core. This is the value a utility property has, or may have, over and above the value of its tangible belongings.

In this connection the Board puts two questions. "First, can a public utility have any excess in value over and above the value of its tangible belongings? This moreover presupposes that the excess value, if any, is wholly distinct from any capitalized earning power predicated on a future setting of the base upon which public utilities are entitled to earn a fair return?"

To this question the Board answers, there is such a thing as "going concern value;" "a plant with a business attached has a value greater than the value of the mere plant without the business attached," and concludes,

"the 'going concern value' will then be largely represented by the cost of developing the business as distinct from the cost of securing the physical structure."

Next the Board puts the question: "In case it transpires that such excess value, known as 'going concern value' exists, and in case the costs involved in the acquisition of such value have been met out of rates exacted from consumers, should such excess value, known as 'going concern value' enter into the base upon which public utilities are entitled to a fair return?"

This question, too, the Board answers in the affirmative so far as it does not appear that the rates exacted from consumers were legally challenged. "We see no escape from the necessity of recognizing the intangible property designated as 'going concern value,' as well as actual physical structures similarly obtained as constituting part of the present lawful possessions of a public utility, even though both these tangible and intangible values were built up in the past out of rates exacted from consumers, it being always assumed that the rates exacted were not legally assailed or assailable." \* \* \* "The business thus acquired must be regarded as a legitimate part of the property of the Company. We cannot equitably project back into the unregulated past a norm of prices that might to-day be regarded as fair and adequate and assume that actual rates exacted in the past, insofar as they exceed what are now deemed fair, have not lawfully become the property of the Company. If these high rates in the past have been employed by the Company to acquire intangible property in the shape of extensive patronage, that expectation of patronage is theirs, and on its fair value the Company is entitled to a return. It may or may not be a subject of regret that regulation was so long deferred; but deferred regulation is no excuse for refusing at present to allow a fair return upon what is the lawful property of the Company."

#### **Company's Contention as to Value of Franchises Denied.**

The Company claimed allowance of \$1,392,235 as the value of its franchises. This claim the Board denied.

The Board finds the value of all intangible property of the Company, including franchises, to be \$1,025,000, and says:

"It is the public policy of the State of New Jersey at present not to allow the capitalization of franchises for an amount in excess of the actual cost involved in obtaining said franchises. That this is a wise and equitable policy we think is incontestable. One of the characteristic features of a public utility such as a gas company is that it does not possess and ordinarily cannot afford to purchase the land requisite for the location of its distributing apparatus. When by its secondary franchises such permits to locate are granted to a company without other expense than the necessary business and legal costs of securing municipal consents, it seems unthinkable, as a matter of equity and public policy, that the easements gratuitously granted should be made the basis for an additional charge to be imposed upon the grantor." The Board further says: "It is quite obvious that our finding as to the total amount of intangible property (\$1,025,000) is tantamount to including the franchises of the Company at a moderate rating—at a value comparable with the cost of obtaining these or similar franchises. It amounts therefore to a practical denial of the Company's contention as to the value of its franchises. The figures claimed for the franchises by the Company

of \$1,392,235, considerably exceeds our appraisal of the Company's entire intangible property."

**Securities Issued in Merger Not Proper Basis for Rates.**

The Company contended before the Board that the par value of securities originating in the merger of six different gas and electric concerns in this district in 1899 determine an amount below which the Board's aggregate valuation could not fail. This contention is expressly denied by the Board.

In the consolidation of the six gas and electric companies creating The Paterson & Passaic Gas & Electric Company in 1899, the capitalization of the latter company was fixed at \$5,000,000 in stock and a like amount in bonds. Of this, approximately all of the stock and \$4,100,000 of the bonds were used in effecting the consolidation.

The Board finds that the capitalization resulting from the consolidation was in excess of the real assets.

"Over and above \$2,224,100 issued to The United Gas Improvement Company for 'sundry claims and franchises,' the excess of par value of stock and bonds issued over the par value of stock and bonds received was \$3,893,691. While no evidence of the value of the 'sundry claims and franchises' of the U. G. I. Co. was produced, yet as the Company under the arrangement received in bonds \$764,000 it may perhaps be surmised that not all of the \$1,460,100 in stock received by that Company was represented by their extant property of an equivalent value. If this stock was all bonus, and if the excess in securities received by the six merging companies was similarly bonus, it would seem that the consolidation involved a total of \$5,353,791 in securities based on anticipation rather than of solid assets; and of the capitalization here involved it is agreed that approximately two-thirds are applicable to the gas properties."

The lease of 1903 of The Paterson & Passaic Gas & Electric Company to the Public Service Corporation provided for payment as rental of interest on the bonded debt, and an amount equivalent to dividends on the stock of The Paterson & Passaic Gas & Electric Company for the first year of 1½ per cent., for the second of 2 per cent., and for each subsequent year of an additional half per cent. until eventually 5 per cent. was reached.

If, at the time of the lease, the property taken over by the Public Service Corporation in excess of the bonded indebtedness was represented by assets of value equivalent to the stock created by the consolidation, why was so low a return accepted by the constituent companies, or how was the Public Service Corporation able to induce the lessors to accept so meagre a return as rental upon the stock of the newly created company?

The later lease of The Ridgewood Company to The Public Service Gas Company, while guaranteeing five per cent. on the bonds guaranteed only two per cent. on the stock.

The decision states the claim of the Company to be that whatever the precise amount of water that was injected into securities resulting from the consolidation, yet that, since the securities were issued under due form of law, are widely scattered "and people have paid for them in honest money," the Board, while it should not allow any rate like ten per cent. thereon, should "stamp five per cent. on the bonds and five per cent. on the stock" and treat the money behind that (i. e., cash subsequently invested in the property) as "genuine money."



To this claim the Board, adopting the language of *Smyth vs. Ames*, 169 U. S. 466, answers that if a utility corporation has bonded its property for an amount which exceeds its fair value, or if its capitalization is largely fictitious, it may not impose upon the public the burden of such increased rates as may be required for the purpose of realizing profits upon such excessive valuation or fictitious capitalization.

Both at common law and now in this State by statute a public utility assumes the responsibilities of furnishing safe, proper and adequate service at reasonable rates and undertakes its business with the explicit knowledge of the State's right and power to set reasonable rates. Any capitalization it effects is effected subject to the State's reserved power in the premises it cannot plead its capitalization nor any contracts it may have undertaken as barring the State's exercise of its power as to rates. When moreover the capitalization, albeit legal, is demonstrably in excess of the value of its assets at the time of capitalization, the public utility cannot cite its unchallenged capitalization as a bar to the State's exercise of inherent prerogative.

#### Rate of Return.

The Board does not go on record as favoring any particular rate of return applicable to all cases. The return must be sufficient to attract the large amount of capital required each year in making the additions and extensions to plant and distribution system which the growth in communities demands.

The price fixed, 90c. per thousand cubic feet, will afford a return of approximately 8% on the value of the property as found by the Board.

#### General Efficiency Good.

The Board finds that the general efficiency of the Company is at least as good, and probably better, than the average of the companies with which comparisons have been made.

#### Chronology.

1911.

June 9th.

Complaint by Mayor Andrew F. McBride, of Paterson, relating to gas, electric, water, trolley and railroad commutation rates.

Separation of complaint required by Board.

July 25th.

Resolution calling for hearing "As to whether the existing schedule of rates of Public Service Gas Company for gas is just and reasonable."

August 1st.

Petition of City of Passaic for inquiry as to gas rates filed.

August 15th.

Motion entered outlining an inventory of statements to be filed by Company.

September 27th.

Proposition of Company submitted to Board.

Forstall and Robison engaged by Board to make inventory and appraisal of the property in Passaic Division.

1912.

January 3rd.

Taking of testimony begun.

September 13th.

Taking of testimony concluded.

October 11-12.

Oral argument begun and concluded.

Transcript of testimony 2,541 pages, not including exhibits.

Appearing before the Board as Counsel.

For the Board, Frank H. Sommer.

For the Company, Thomas N. McCarter, Frank Bergen,  
L. D. H. Gilmour, E. A. Armstrong.

For Paterson, Thomas F. McCran, Edward F. Merrey.

For Passaic, George L. Record, Albert O. Miller, Jr.

Engineers making inventory and appraisals,

For Board, Forstall &amp; Robison, Philander Betts.

For Company, William W. Randolph.

Accountant employed by Board, Marvin Scudder.

Representing cities as Expert Adviser, Professor Edward  
W. Bemis.

## REPORT.

The inquiry into the reasonableness of gas rates charged by Public Service Gas Company in the Passaic Division dates back to a letter written by Mayor Andrew F. McBride of Paterson to this Board. This letter was dated June 9th, 1911. It requested the Board to investigate rates charged for gas and electricity in Paterson by the Public Service Gas and Public Service Electric Companies, and it requested a similar investigation of rates charged for water by the Passaic Water Company, and also of trolley fares charged by the Public Service Railway Company. It also requested an investigation of commutation rates charged by railroads for journeys between Paterson and Jersey City. To this letter, a reply was sent stating that the Board was willing to make the inquiries asked, but would have to separate the various inquiries. On July 25th, 1911, at a meeting of the Board of Public Utility Commissioners, a resolution was entered in the minutes calling for a hearing "as to whether the existing schedule of rates of Public Service Gas Company for gas is just and reasonable."

The hearing so initiated was based upon the following sections of the statute creating the Board.

Sec. 18. (a) which provides: "No public utility \* \* \* shall make, impose or exact any unjust or unreasonable \* \* \* rate \* \* \* for any product or service supplied by it within this State."

Sec. 16. (c) which enacts: "The Board shall have power \* \* \* after hearing, upon notice, by order in writing, to fix just and reasonable rates \* \* \* which shall be imposed, observed and followed thereafter by any public utility \* \* \* whenever the Board shall determine any existing \* \* \* rate \* \* \* to be unjust (or) unreasonable. \* \* \*"

Sec. 16. (b) which provides that the Board shall have power: "from time to time to appraise and value the property of any public utility \* \* \* whenever in the judgment of said Board it shall be necessary so to do, for the purpose of carrying out any of the provisions of this act. \* \*"

On August 1st, 1911, there was filed by Mr. George L. Record a petition of the City of Passaic praying that the Board would investigate rates for gas in Passaic, and would reduce the same. On August 15th, 1911, a motion was entered in the minutes of the Board outlining an inventory of statements required to be filed by the Public Service Gas Company with the Board. Both the complaint of the City of Paterson and that of the City of Passaic with reference to the rates for gas were merged in the proceeding so initiated by the Board through the resolution before referred to.

The investigation in its scope has in so far been delimited to what is known as the Passaic Division of the Public Service Gas Company. This division includes the cities of Paterson and Passaic, Acquackanonk Township, Hawthorne Borough, Saddle River Township, Prospect Park Borough, Haledon Borough, Garfield Borough, Lodi Borough, Nutley Town, Little Falls Township, Ridgewood Village, Glen Rock Borough, Wallington Borough and Totowa Borough. In this proceeding the Board was represented by Mr. Frank H. Sommer, counsel; the Company by Messrs. Thomas N. McCarter, Frank Bergen, L. D. H. Gilmour and E. A. Armstrong. The City of Paterson was represented first by Mr. Thomas F. McCran, and afterwards by Mr. Edward F. Merrey. The City of Passaic was represented by Messrs. George L. Record and Albert O. Miller, Jr.

The firm of Forstall & Robison was engaged by the Commission to make an inventory and appraisal of the property of the Company found in this division. The Company employed for the same purpose Mr. William W. Randolph. The

cities of Paterson and Passaic engaged the services of Professor Edward W. Bemis as expert adviser. During the course of the investigation, it was found necessary to have an examination made of the Company's books of account, and for this purpose Mr. Marvin Scudder of The Investor's Agency was engaged by the Commission, and made for them the examination required.

After the initiation of the hearing and at the outset of the taking of testimony a proposition was submitted to the Board on behalf of the Public Service Gas Company and the Public Service Electric Company. This proposition contemplated in the case of the Gas Company the putting into operation of a uniform flat rate of \$1.00 as of January 1st, 1912, for the whole territory served by the Gas Company, and on January 1st, 1914, the reduction of this base rate to 95 cents and on January 1st, 1916, the further reduction in this base rate to 90 cents.

It further contemplated in the case of the Electric Company as of January 1st, 1912, the adoption of the same schedule of discounts from the base rate lately put into effect in New York by the Edison Company which embraces a more liberal schedule of discounts than now in force in this territory. The present Public Service rate steps down one cent for every 500 kw. hours of monthly consumption for the first five steps; the New York rate steps down one cent for every 250 kw. hours of monthly consumption for the first four steps. In the fourth year of the period, or on January 1st, 1915, the base rate is further reduced from ten cents to nine cents, thus combining the first two steps of the theretofore existing schedule.

In the submission of this proposition the following statement was made: "It is proper to add that this offer is made as an entirety with regard to the two properties, and the companies stand committed to no departure therefrom."

Connecting, as the proposition did, rates for gas and electricity having no relation to each other and contemplating the fixing of rates extending over a period of five years, without investigation, the Board took no action on the proposition.

The actual taking of testimony was begun on January

3d, 1912, at the Court House in the City of Newark. Testimony was taken thereafter up to the thirteenth of September, 1912, and oral argument was concluded before the Commission on October 11-12th, 1912. Printed briefs were filed by Mr. Frank Bergen for the Company; by Mr. Edward F. Merrey for the City of Paterson; and by Messrs. Albert O. Miller, Jr., George L. Record and Edward F. Merrey for the City of Passaic.

The taking of testimony occupied some twenty-six or twenty-seven days. The transcript of the evidence fills 2,541 pages, and the exhibits submitted have been lengthy and numerous. Much expert testimony was introduced and apparently every important aspect of the matter, both as regards facts and the law, was thoroughly canvassed.

As the result of careful consideration of the evidence and argument upon all of the facts before it, the Board of Public Utility Commissioners finds and determines that the rate of One Dollar and Ten Cents with a discount of ten cents per thousand cubic feet for prompt payment now charged by the Public Service Gas Company for gas in the Passaic Division is unjust and unreasonable, and more than sufficient to afford to the Company a fair return upon the Company's property within the district, used and useful in the furnishing of gas to the consumers therein. The Board of Public Utility Commissioners finds and determines that a price of ninety (90) cents per thousand cubic feet is a just and reasonable price to be exacted in that division from consumers who have hitherto been charged One Dollar and Ten Cents (\$1.10) per thousand cubic feet with discount for prompt payment as stated. The grounds upon which these findings are based will appear in the subjoined parts of this report, and an Order accordingly will be entered and served upon the Company requiring it on and after February 1st, 1913, thereafter to set, establish and charge a rate of ninety (90) cents in place of the said rate now set and exacted.

The Board of Public Utility Commissioners HEREBY RECOMMENDS to Public Service Gas Company to set the same rate of ninety (90) cents per thousand cubic feet through-

out all the other divisions of the State where now it is exacting the rate of One Dollar net per thousand cubic feet. Except for the Passaic Division, where the Board's order is mandatory, the Board makes a recommendation only, for the reason that under the statute it may not issue an order in the premises except after due notice and hearing. It is also RECOMMENDED that the schedule for quantitative discounts be readjusted in accordance with the above rate of ninety cents per thousand cubic feet.

In order to determine the fair value of the Company's investment in this Division upon which it is entitled to earn a reasonable return, it is necessary to determine the value (1) of its physical plant and associated plant assets; and (2) the value of the Company's intangible property.

#### VALUATION.

In making up the valuation of the property, we have classified it in accordance with the definitions in the Classification of Accounts promulgated by the Interstate Commerce Commission, for the District of Columbia, as this classification accurately defines each class of property. For the purposes of this valuation, we adhere to the numbers found in the classification referred to. Tangible physical property is first taken up, and consideration of intangible values follows.

The first item is No. 300, Land.

The testimony as to this item produced before the Board has been extensive, the Board having employed Mr. S. S. Sherwood to make a valuation on the property in Paterson and in Ridgewood, and having employed Mr. Thomas McMahon to make a valuation on the property located in Passaic. The Company presented as witnesses testifying with regard to land values: Mr. Frank Hughes, Mr. Frank W. Furrey, Mr. Edward H. Lambert, Mr. Percy A. Gaddis.

The City of Paterson put on as witnesses Mr. Thomas H. Risk, Tax Assessor, and Mr. David V. Proskey.

The City of Passaic put on as witnesses Mr. James T. Boyle, Mr. Aaron Witte, Mr. John Woods and Mr. Louis Lipchitz. Mr. Philip I. Hover and Mr. Percy A. Gaddis

for the Company, and Mr. S. S. Sherwood for the Commission, testified with regard to land values in Ridgewood.

The following table No. 1 is a comparison of the different valuations for land. Following the table are the references showing on what page in the testimony each item is found.

1

## REAL ESTATE COMPARISON OF VALUATIONS.

TABLE I.

## PATERSON.

Plot.	1. Company. Assessment.	2.	3. Sherwood.	4. Hughes.	5. Furrey.	6. Lambert.	7. Gaddis.	8. Risk.	9. Proskey. General testimony
Hillman St. ....	\$ 3,830	\$ 1,400	\$ 1,500	\$ 2,500	\$ 2,378.49	\$ 2,700	{	\$282,529	\$49,200
River Works .....	311,250	49,700	44,860	259,000	317,819.25	295,200			
Ellison St. ....	10,887	7,640	10,400	{ 20,000	8,820.91	10,400	11,318		
Paterson St. ....	10,414	7,500	12,000	{	8,925.44	10,750	10,852		
	\$336,381	\$66,240	\$68,760	\$281,500	\$337,944.09	\$319,050	\$304,699		

## PASSAIC.

Tract.	10. Company. Assessment.	11.	12. Hughes.	13. Gaddis.	14. Boyle.	15. Witte.	16. Woods.	17. Lipchitz.	18. McMahon.
Works Plot .....	\$109,144	\$34,000	\$101,500	{ 189,890	\$39,325	\$39,360	\$39,300	\$39,325	\$45,000
Railroad Lot .....	5,290	600	4,400		2,800	2,800	2,500		1,100
Holder Station ....	11,369	4,300	12,000		6,349	6,200	4,000	6,125	5,750
	\$125,803	\$38,900	\$117,900	\$189,890	\$48,474	\$48,360	\$45,800	\$45,450	\$51,850





The witnesses for the Company confined their testimony to reproduction value, and in each case compiled an estimate of value on some theory involving the reproduction of a site similarly located and of equal area. Two of these witnesses assumed in estimating reproduction value that buildings would have to be removed in order to prepare the site for the Gas Company. The testimony of the assessors and of Messrs. Sherwood and McMahon was not confined to reproduction value, but was intended primarily to give the price which a willing seller not compelled to sell would accept from a purchaser willing but not compelled to buy.

Much testimony was submitted with regard to allowances for "plottage" or assembly value. We have given this phase of the matter much careful thought and have made certain allowances which are indicated below. Certain items of land and buildings are used by both the Public Service Gas Company and the Public Service Electric Company. These items are divided in proportion approximately to the gross revenues of the respective companies.

After due consideration of all the testimony with regard to land values, we have adopted the following as best representing the real values of the various items of real estate.

1. Paterson Plant.  
 Valuation made by S. S. Sherwood.....\$44,860  
 Allowance for plottage of 10%..... 4,500  


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\$49,360.00
2. Lots on Hillman St., Paterson.  
 Sherwood valuation..... \$1,500.00
3. Passaic Plant.  
 McMahon valuation .....\$45,000  
 2-3rds to gas.....\$30,000  
 Allowance for plottage 10%..... 3,000  


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\$33,000.00
4. Passaic Holder Station.  
 Valuation by Witte, Boyle, Woods and McMahon, \$5,575.  
 Valuation by Hughes for the Company was \$12,000.  
 Property is assessed at \$4,300. The average between  
 Hughes at \$12,000, and the average of the four as-  
 sessors at \$5,575 is \$8,787.  
 On the whole, we believe that \$8,500 is a fair allowance  
 for land occupied by the Passaic holder station..... \$8,500.00
5. Lot on the Erie R. R. in Passaic.  
 This lot has been valued at various figures ranging from  
 \$1,100 to \$5,290; is assessed at \$600; was valued by

McMahon at \$1,100, and after considering the testimony with regard to the fact that this lot is not now used \* in connection with the gas business but may be used in the future, we accept the value of..... \$1,100.00

6. Ridgewood Station.

This land was estimated at \$3,000 by Sherwood to \$5,970 by the Company; is assessed at \$500, and in view of all the testimony.....we accept the value of \$3,000.00

7. Paterson office and shop location.

This property is assessed at \$15,140, and was valued at figures ranging from \$17,746. to \$22,400. We accept the valuation made by Sherwood of \$22,400, and allow 2-3ds of this to gas, and accept for value of the land used by the gas company..... \$15,000.00

TOTAL value for land as given above amounts to..... \$111,160.00 and after careful consideration of all the testimony produced in this case, we accept the value for land of \$111,160. Much of the testimony with reference to land values referred to the cost of reproducing a similar site, under conditions which we do not think would obtain, and did not purport to be an estimate of the actual value of present property.

### PLANT AND DISTRIBUTION SYSTEM.

Much testimony has been given as to detailed costs of various items of physical property. Much of the testimony tends to show that we are not justified in accepting, without modification, any one of the several appraisals made by the various engineers engaged in making valuations of the physical property. Some items are demonstrably low†; some others are equally high.

In addition to valuations made by the engineers, we have available definite information as to the actual cost of constructing some items of the Company's property, and we have information as to the total amount expended by the Company during the past eight years. We are inclined to estimate the value of physical property by using all available information with regard to values; and especially are we inclined to accept as a measure of value for all of the physical property of the Company, the unit costs to the Company

\* See testimony pages 809-813.

†See testimony of Forstall, pg. 2191 sq.

for that part of the property constructed during the past eight years. We are not inclined to hold strictly to a valuation made up in this way, as testimony of certain witnesses has demonstrated that certain items cost less, owing to peculiar conditions governing, than would ordinarily be the case. It may be equally true that some items cost more, but on the whole we believe that recent records of cost are very important in deciding upon the value to be set for various groups of physical property.

No. 305. General Structures.

No. 307. Works and station structures.

For the valuations for buildings made by the various appraisals and in view of all the testimony, we are inclined to accept the basis of valuation used by A. E. Schneeweiss of the J. W. Ferguson Company. He did not, however, set values on all items classed under structures. We, therefore, take a valuation based on Forstall's inventory and Schneeweiss' unit prices.

Accounts Nos. 305 and 307 include a number of items, such as fences, paving, oil tanks, tar tanks and water tanks, which are not comparable with buildings and therefore it is not proper to apply to the full amount of these accounts a percentage difference obtained from the two sets of valuations of buildings. The comparison should be made as follows:

Schneeweiss gave values for the following buildings:

**Paterson Works.**

Old Generator House .....	\$ 7,318	without operating floor.
Old Boiler House .....	7,438	
Purifying House .....	21,813	without electric lighting.
Coal Shed .....	3,375	
Exhauster, Engine and Pusher House .....	11,096	
Office Bldg., Paterson Wks.....	6,052	without lighting and heating.
Stable .....	4,121	

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\$61,213

Boiler and Valve House.....		without plumbing, heating and pho-
Passaic Holder Station.....	5,169	tometer room.
Ellison Street Office.....	35,923	without plumbing, heating, ventil-
		ating and electric wiring.

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\$102,305

### 370 NEW JERSEY BOARD OF PUB. UTIL. COMMISSIONERS.

For the same buildings Forstall & Robison originally gave the values which are included in the figures on the comparison sheet which were as follows:

Paterson Works.	
Old Generator House.....	\$ 8,894
Old Boiler House.....	5,272
Purifying House .....	15,723
Coal Shed .....	2,985
Exhauster, Engine and Pusher House.....	8,559
Office Building at Works.....	4,490
Stable .....	2,782

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\$48,705

Boiler and Valve House, Passaic Holder.....	3,775
Ellison Street Office .....	27,938

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\$80,418

To obtain an accurate comparison between the two sets of values there should be deducted from Forstall & Robison's values the amounts included in them for the items not included by Schneeweiss. These amounts are as follows:

Generator House Operating Floor.....	\$ 2,392
Electric Lighting in Purifying House.....	176
Lighting and Heating in Works Office Building.....	82
Plumbing and Heating in Passaic Holder Station Boiler and Valve House .....	72
Plumbing, Heating and Ventilating, and Electric Wiring in the Ellison Street Office .....	2,336

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\$5,058

To follow the testimony exactly there should be added to the figures originally given by Forstall & Robison the corrections for omissions as made by Forstall, after the comparative table was prepared, which are given on pages 2191 to 2195 of the testimony. These corrections for the buildings under consideration are:

	Total	Gas Dept.
Ellison Street Office Building.....	\$ 7,432	\$4,975
Old Generator House .....	804	804
Old Boiler House .....	1,187	1,187
Exhauster, Engine and Pusher House.....	141	141
Purifying House .....	2,125	2,125
	<hr/>	<hr/>
	\$11,689	\$9,232

Adding the total amount to the total originally given for these buildings Forstall & Robison's corrected total becomes \$92,107. Deducting from this the value, \$5,059, of the items not included by Schneeweiss, the figure to compare with Schneeweiss becomes \$87,049. The total of the values given by Schneeweiss was \$102,305, and Schneeweiss' valuation is, therefore, 1.175 times that of Forstall & Robison.

The total value of the buildings belonging to the gas department as given by Forstall & Robison in the figures contained on the comparison sheet was \$143,350. To this must be added the corrections already noted as belonging to the gas department and further corrections made for buildings not valued by Schneeweiss as follows:

Office and Store-room Passaic Works Gas Portion.....	\$ 629
New Generator House Paterson Works.....	770
New Boiler House Paterson Works.....	653
Pump House Paterson Works.....	134
	<hr/>
	\$2,186

The total additions are, therefore, \$11,418 and the total corrected value for buildings according to Forstall & Robison \$154,768. Multiplying this by 1.175 the total value of the buildings on the basis of Schneeweiss' valuation for nine buildings would be \$181,850.

The valuation of fences, paving, and tanks, including the old relief holder now used as a tar tank but valued in these figures as a holder, were as follows:

Randolph less General Contractor's Profit.....	\$95,530
Stone & Webster with allowance for items not originally included in base cost but added in making up the figures for the com- parison sheet .....	78,100
Bartlett & Hayward corrected as noted for Stone & Webster.....	105,775
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3) \$279,405	
	<hr/>
	\$93,135

The average of these three valuations is \$93,135. Forstall & Robison's valuation for these items was \$88,662, and averaging this with the average of the valuations made by the Company's engineers the result is \$90,900.

From this must be deducted, however, the difference between the value of the old relief holder as a holder and its value as a tar tank. This is given by Forstall & Robison as \$7,558, so the value of the miscellaneous items in accounts Nos. 305 and 307 worked out on this basis becomes \$83,340. Adding this to the \$181,850 found for the buildings, the total amount for accounts Nos. 305 and 307 is \$265,190. To the estimate of bare cost there must be added certain allowances for expenditures generally called overhead charges. Forstall's appraisal included a total allowance of 15.54%; Randolph allowed 20%; Stone & Webster 20.5%; Bartlett & Hayward 20.4%; Humphreys & Miller allowed approximately 21.7%. Forstall, however, stated that an additional 2% ought to be added to his allowance. This is best explained by quoting from the letter transmitting his appraisal to this Board. It runs as follows:

"In these charges we cover only engineering and supervision, omissions, contingencies and interest during construction. We have taken engineering and supervision at 5%, omissions, in view of the careful inventory, at only 2%, and contingencies at 2%. The allowance for interest is based upon a period for and a progress of, construction that would call for an average payment of interest at the rate of 6%, for one year on the total amount expended." "It will be seen that the overhead charges applied do not include any organization expenses, liability for accidents and damages during construction nor taxes during construction. Without the value of the land and with the uncertainty as to the extent of the liability for accident under the existing laws, we have not felt able to fix a definite percentage for the omitted items, but think that they would amount to at least 2% of the total before any overhead charges are applied."

Eleven (11) per cent. should, therefore, be added before computing the interest at 6%, this making a total of 17.6%.

After due consideration, we accept this figure as the fairest estimate for these allowances, and apply it in connection with each class of property.

We have previously found the bare cost for accounts Nos. 305 and 307 to be \$265,190. Adding to this the allowance of

17.6% amounting to \$46,830, we obtain a gross valuation of \$312,020.

**No. 306. General Equipment.**

General Equipment includes general office equipment, general shop equipment, general store-room equipment and stable equipment. These items have been estimated by Forstall & Robison at a valuation of \$9,977. Similar items have been estimated by Randolph at a valuation of \$11,300; by Stone & Webster at \$8,938. The average of the last two appraisals is \$10,119. Averaging this with the valuation of Forstall, \$9,977, gives a weighted average of \$10,048. Add to this the allowance of 17.6% for overhead charges, we obtain a gross valuation of \$11,816, which we, therefore, accept as the value of all property coming under class of General Equipment.

**No. 308. Holders.**

In arriving at the valuation of holders, reference is made to comparative table prepared from the appraisals submitted by the various engineers at conferences held in the course of these proceedings, and with the consent of all the parties thereto, between Mr. Earnshaw of the Public Service Gas Company and Mr. Forstall, Consulting Engineer for the Commission in this matter, and found on pages 2197-2198 of the testimony. The summary of valuation of gas holders, not including overhead charges of any kind, is as follows:

W. W. Randolph .....	\$407,227
Bartlett-Hayward .....	475,578
Stone & Webster .....	380,984
Forstall & Robison .....	354,548

The average of these appraisals is \$404,584.

Exhibit No. 9, found on page 157 of the testimony, is a comparative statement of the cost of holders made by engineers of the Commission from the appraisals of Randolph, and Forstall & Robison. Since this comparison was made, however, appraisals of the entire property were made by Bartlett-Hayward, and by Stone & Webster, and the following table is a comparison of the values of holders as made by all of the appraisers.



## HOLDERS.

Name.		Location.	Capacity.	Randolph.		Bartlett-Hayward.		Stone & Webster.	Forstall.	Contract.	Average.
				A.	B.						
1 Relief No. 2		Paterson	210M	38,250	34,773	51,520		23,728	25,992		34,003
1 Storage No. 3		"	450M	76,000	69,090	79,750		58,465	49,023		64,082
1 " No. 4		"	2,000M	148,500	135,000	146,780		141,273	129,051	151,200	138,026
2 Relief		Passaic	30M ea	18,900	17,180	23,940		14,596	10,912		16,657
1 Storage		"	250M	38,950	35,400	44,580		29,087	25,041	66,500	33,527
1 "		"	1,500M	111,500	101,360	107,508		101,187	102,835	10,000	103,222
1 "		Ridgewood	60M	15,850	14,410	21,500		12,648	11,694	76,500	15,063
				447,950	407,213	475,578		380,984	354,548		404,580

A—Includes 10% general contractor's profit.

B—Excludes " "

Values under B are used in computing all averages.

The last column of this table is an average of the valuations made by all four appraisers, and is best understood by an examination of the table.

The old holder in Paterson now used as tar tank is omitted because it has been included under Structures.

The first item is a relief holder located at Paterson, sometimes known as No. 2, and having a capacity of 210M cubic feet. The average of various appraisals for this item is \$34,003. Comparison of the figures shows that that of Bartlett-Hayward is considerably higher than any of the others. An average of the other three is \$28,164. If we average the three appraisals made by the Company's engineers, we obtain an average value of \$36,673. If we in turn strike an average between this and the valuation set upon this holder by the Commission's engineer of \$25,992, we obtain an average of \$31,331, and we are inclined to believe that this figure best represents the value which should be set upon this holder. Adding to this the overhead allowance of 17.6% amounting to \$5,514, we obtain the value which we accept for this holder of \$36,845.

The next item, sometimes known as Holder No. 3, is a storage holder located at Paterson, with a capacity of 450M cubic feet. The average of all the appraisals is \$64,082. Here again Bartlett-Hayward have estimated the cost at a higher figure than any other appraiser. The average of the valuations made by the Company's engineers is \$69,101. An average struck between this figure and the appraisal of Forstall & Robison is \$59,062, and we accept this figure as the best basis for valuing the holder under consideration. Adding to this the overhead charges of 17.6% amounting to \$10,394, we obtain a gross valuation of \$69,456.

The next item is a storage holder located in Paterson having a capacity of 2,000M cubic feet. The average value of all the appraisals in this case is \$138,026. The valuations made of this holder by the various engineers more closely correspond than in connection with almost any other item. Examination of the contract, however, filed by the Company, shows that the actual cost for this holder, including foundations, was \$151,200. Examination of the testimony of Mr. Bruce, pages 1269-1270, indicates that peculiar conditions existed at the time the holder was constructed, by reason of which the Company had to pay an excessive price, and

we do not consider that the value of the holder is best shown by its cost, but have accepted as the best measure of its value the average of the appraisals made by all of the engineers, this average being \$138,040. To this is added the allowance for overhead charges of 17.6%, amounting to \$24,295, and accept as the gross value for this holder the amount of \$162-335.

The next item consists of two relief holders located in Passaic, one having a capacity of 32M cubic feet and the other a capacity of 30M cubic feet. The average of the valuations made by the various appraisers is \$16,160. It must be remembered that these valuations are estimates of the cost new of these items. Forstall & Robison is the only one of the appraisers who made any estimate of present value. They have estimated the value of these two holders as *nil*. They are not now used and useful, nor could they ever be again made useful in the manufacture of gas in their present location. An examination of the holders themselves indicates that no junk dealer would pay anything for the holders, if required at the same time to remove the tanks at his own expense. They have long since become obsolete from every standpoint, and are not used in any way in connection with the business of the Gas Company, and should have been charged off from the books several years ago. We, therefore, allow nothing in making up this valuation for this item. (See pp. 1373-1376, Testimony of C. W. Hunter.)

The next item is a storage holder located at the old Passaic Works, having a capacity of 250M cubic feet. The average of the valuations for this holder is \$33,527. In this case again Bartlett-Hayward has presented an estimate far in excess of the other appraisers. Striking an average, however, of the three appraisers for the Company we obtain \$36,382, and averaging this in turn with the value placed upon this holder by Forstall & Robison, \$25,041, we obtain a figure of \$30,711, and adding to this the allowance for overhead charges amounting to \$5,405.00, we obtain a gross value of \$36,116, which we accept as valuation for this holder.

The next item is a storage holder located at the Passaic holder station, having a capacity of 1,500M cubic feet. The

average of the various appraisers is \$103,222. In this case, the various valuations are fairly close to one another. Examination of the contracts filed by the Company shows that the contract price for the holder without foundations was \$66,500. Allowing \$10,000 for foundations gives a gross cost of the holder of \$76,500. It is understood that the contractor who erected this holder lost money in the transaction, and we are not inclined to hold the valuation down to the actual cost price, the circumstances having been peculiar. We accept the average value made by all the appraisers of \$103,222. Adding to this the allowance of \$18,167 for overhead charges, we obtain a gross value of \$121,389, which we accept as the best measure of the valuation of this holder.

The remaining item is a storage holder located at Ridgewood, having a capacity of 60M cubic feet. The average of the valuations of this holder is \$15,063. We find, however, that Bartlett-Hayward is again extremely high proportionately in their valuation of the holder. The average of the valuations made by the Company's engineers is \$16,186. Forstall's valuation is \$11,694, and the average of these two figures is \$13,940. Adding to this the allowance for overhead charges, \$2,453, we obtain a gross valuation which we accept for this holder of \$16,393.

## SUMMARY OF VALUATIONS FOR HOLDERS.

1 Relief	210 M	Paterson	.....	\$ 36,845
1 Storage	450 M	"	.....	69,456
1 "	2000 M	"	.....	162,335
2 Relief	30 M	(no value)		
1 Storage	250 M	Passaic	.....	36,116
1 "	1500 M	"	.....	121,389
1 "	60 M	Ridgewood	.....	16,393

TOTAL.....\$442,534

## No. 309. Furnaces, Boilers and Accessories.

The average of all four appraisals is \$48,784. The average of the three appraisals made by the Company's engineers is \$50,364. Forstall's appraisal was \$44,045. We then average it with the average of the three engineers employed by the Company and find a general average in this way of \$47,204. Adding to this the allowance for overhead charges, \$8,307, we obtain a gross valuation of \$55,511.

No. 310. Steam Engines.

No. 311. Gas Engines.

No. 312. Miscellaneous Power Plant Equipment.

No. 314. Water Gas Sets and Accessories.

Owing to the methods of classification followed by the appraisers for the Company, it was not possible to separate the items of plant into all of the classes called for in the classification of accounts we have used. Steam engines and gas engines are usually classed with the blowers or pumps used in connection with the water gas sets or accessory equipment, and for the purposes of comparison, some items of Nos. 310, 311 and 312 have been classed with No. 314, and certain other items of these accounts have been classed with No. 316 in making up the comparative table found on pages 2197-2198 of the testimony.

Group amounts of appraisals were as follows:

Randolph .....	\$103,586
Bartlett-Hayward .....	101,396
Stone & Webster.....	98,583
Forstall & Robison .....	107,886

The average of these four appraisals is \$102,863, and because of the close conformity of the various appraisals to the average, we accept it as the proper figure. Deducting, however, \$12,039 for obsolete apparatus in Passaic gives a value of \$90,824. (See pages 1341-1342 Testimony.) To this is added the usual allowance for overhead charges, \$15,985, giving as a gross valuation for this class of property the sum of \$106,809.

No. 310. Steam Engines.

No. 311. Gas Engines.

No. 312. Miscellaneous Power Plant Equipment.

No. 316. Accessory Equipment at Works.

The appraisals were as follows:

Randolph .....	\$110,581
Bartlett-Hayward .....	158,725
Stone & Webster .....	123,395
Forstall & Robison .....	112,840

The average of the four appraisals is \$126,385. In this case again Bartlett-Hayward has submitted a value considerably higher than any of the others. This condition of affairs

requires analysis. From the various appraisals, a table has been made up, giving the valuations for certain classes of plant.

	Forstall and Robison	Randolph	Bartlett Hayward & Co.	Stone and Webster
<b>PATERSON.</b>				
Yard connections .....	\$39,724	\$51,000	\$73,515	\$50,980
General Water Tar and Drain Pipes .....	3,934	3,170	.....	.....
Total for Paterson .....	\$43,658	\$54,170	\$73,515	\$50,980
<b>PASSAIC.</b>				
Yard connections, Works.....	\$5,497	\$2,750	\$5,529	\$2,600
Yard connections, Holder Sta- tion .....	.....	3,050	5,238	2,800
Drains and Tar Lines.....	.....	255	566	.....
	\$5,497	\$6,055	\$11,333	\$5,400
<b>RIDGEWOOD.</b>				
Yard Connections .....	\$1,412	\$930	\$1,657	\$1,045
Drain Lines .....	.....	.....	64	.....
	\$1,412	\$930	\$1,721	\$1,045
Total for all .....	\$50,567	\$61,155	\$86,569	\$57,425
				add 5.83%
				\$60,773
Excess Bartlett-Hayward & Co.	\$36,002	\$25,414		\$25,796

This table shows that of the excess of Bartlett-Hayward's valuation practically 70% over the average of the valuations is found in their valuation of yard connections and other piping and drains, the larger part of which is placed underground. As will be seen later, their valuation of the street mains is so much higher than the actual cost to the company, as determined by us, that their opinion on the cost of this class of work carries little weight with us, and we have, therefore, considered for this group of accounts only the valuations of the other three witnesses. The average of their valuations is \$115,605. Adding to this the allowance for overhead charges, \$20,364, we obtain a gross valuation of \$135,969.

#### No. 313 Benches and Retorts.

This item is comparatively small. Is estimated by

Randolph at .....	\$ 4,345
Bartlett-Hayward at .....	3,868
Stone & Webster at.....	2,555
Forstall & Robison at.....	2,472

The average of all the appraisals is \$3,310. In view of the fact, however, that the benches and retorts found in this district are all located in the old plant at Ridgewood which is not now in use, and in consequence of which some charges to depreciation should have been made, we are accepting the valuation made by Forstall & Robison of \$2,472, less the estimated depreciation due to unfitness for emergency use of \$2,197 or \$275, to which has been added the allowance for overhead charges, \$48.48, making a gross valuation of \$323.

No. 315. Purification Apparatus.

In this case the average of all the appraisals is \$71,801. The average of the three appraisals made by the engineers for the Company was \$73,836. Averaging this figure \$73,836, with Forstall's \$65,696, we obtain a weighted average of \$69,766 as a fair basis for the valuation of this class of property, to which has been added the allowance of 17.6% amounting to \$12,278, giving a total of \$82,044 as the gross valuation.

No. 323. Gas Tools and Implements.

For this item, the appraisals are as follows:

Randolph .....	\$13,436
Bartlett-Hayward .....	2,667
Stone & Webster .....	10,712
Forstall & Robison .....	10,200

The average of the three appraisals, omitting Bartlett-Hayward, is \$11,449. The average of the two appraisals made by the Company's engineers is \$12,074. Averaging this with the appraisal by Forstall & Robison of \$10,200, we obtain a weighted average of \$11,137. Adding to this the allowance of 17.6%, amounting to \$1,960, we obtain a gross valuation for this class of property of \$13,097.

No. 324. Gas Laboratory Equipment.

The appraisals for this class of property were as follows:

Randolph .....	\$ 1,209
Bartlett-Hayward .....	435
Stone & Webster .....	1,290
Forstall & Robison .....	1,145

It is evident from these figures that Bartlett-Hayward have omitted some items in making their appraisal, and we, therefore, average the valuations as made by the other three

appraisers. This average is \$1,214, and adding to this the allowance of 17.6% amounting to \$213, we obtain a gross valuation of \$1,427.

SUMMARY OF MANUFACTURING ACCOUNTS.

	Value new
Nos. 305 and 307.....	\$ 312,020.00
No. 306 .....	11,816.00
No. 308 .....	442,534.00
No. 309 .....	55,511.00
Nos. 310, 311, 312, 314.....	106,809.00
Nos. 310, 311, 312, 316.....	135,969.00
No. 313 .....	323.00
No. 315 .....	82,044.00
No. 323 .....	13,097.00
No. 324 .....	1,427.00
	<hr/>
	\$1,161,550.00 A,

which includes overhead charges of 17.6%.

To compare with other appraisals made up without overhead :

Randolph .....	\$ 1,044,763
Bartlett-Hayward .....	1,193,422
Stone & Webster .....	1,010,198
Forstall & Robison.....	940,821
	<hr/>
	4) \$4,189,204

Average .....	\$ 1,047,301
Add 17.6 per cent.....	184,325
	<hr/>

\$1,231,626 B

Compare B with A. A being the result of the valuation placed on each class of property after careful consideration and B being the general average of the four appraisers.

DISTRIBUTION SYSTEM.

No. 317. Trunk Lines and Mains.

No. 317a. Paving over mains.

as Oct. 1st, 1911.

Forstall & Robison's appraisal.....	\$1,400,729
Randolph's appraisal .....	1,630,314
Bartlett-Hayward .....	1,732,850
Stone & Webster.....	1,531,958



Average of the four appraisals, \$1,573,962. The average of the three appraisals made by the Company's engineers is \$1,631,707.

The average between this figure and Forstall & Robison's appraisal is \$1,516,218.

With regard to the cost of mains, we have available definite knowledge as to the actual cost during the past eight years, during which time very nearly 30 per cent. of the mains now in place were alid. (See report of Marvin Scudder, May 27th, 1912, Exhibit "E" for actual expenditures, and for the corresponding lengths of mains see Exhibits Nos. 2 and 3 of September 9th, 1912, referred to on page 2188 of the testimony.)

In the appraisals of the various engineers, allowance has been made for all of the paving now found over the mains. It is an undisputed fact that much of the paving now in place was not paid for by the Company, but has been laid by the cities at their expense subsequently to the installation of the mains. We feel that the best guide as to the values is found in the actual cost to the Company for that part of the work installed during recent years. As a matter of fact, more paving has probably been paid for by the Company in recent years than formerly, and any error due to valuing all of the mains by means of unit prices obtained from the books of account for the past few years, would err on the side of liberality toward the Company. A comparison was made by engineers of the Commission and submitted as Exhibit No. 2 on September 9th, 1912. Column 9 of this Exhibit shows that the total value for mains in use on January 1st, 1911, valued as above referred to, was \$1,101,692.66. Allowing for additional construction between January 1st and October 1st, \$82,275, the total value of mains and paving on October 1st, 1911, was approximately \$1,183,967.

For the reasons stated above, we accept this valuation and add to it the allowance for overhead charges of 17.6 per cent. amounting to \$208,378. This gives us a total of \$1,392,345 as best representing the cost to the Company of all mains and paving over mains, based on the costs to the Company for that part of the work which was constructed in the past

eight years. The difference between the amount allowed and the amounts found in the various appraisals is due chiefly to the allowance in the appraisals for all paving now found over mains.

In the various estimates of the cost to reproduce the mains and services, allowances have been made for all of the paving now found in place over mains. Testimony submitted by the municipalities shows that part of this paving was laid subsequent to the installation of the mains and not paid for by the Company. To this extent, in the values adopted by us, allowance has not been made. In adopting this course, we are supported by precedent.

See Cedar Rapids Gas Light Co. vs. City of Cedar Rapids,  
120 N. W. Rep. 966, 970.

Also City of Ashland vs. Ashland Water Co., 4 W. R. C. R.  
306-308.

#### No. 318. Services.

##### No. 318a. Paving over services.

Randolph's appraisal (both included).....	\$460,852
Bartlett-Hayward .....	528,660
Stone & Webster.....	508,639
Forstall & Robison.....	449,111

The average of the four appraisals is \$486,815. The average of the three appraisals made by the Company's engineers is \$499,383, and averaging this with the valuation of Forstall & Robison gives us a weighted average of \$474,247.

With regard to actual cost of services and paving over the same, we have available some definite information. This is found in the report of Marvin Scudder, May 27th, 1912, Exhibit "F". The total number of services was supplied by the Company in a statement filed on September 9th, 1912. Services installed 1906-1911, 9,439 at a cost as shown in Exhibit "F", Scudder report, of \$136,497.88, or at the average of \$14.46 each. Based on this average cost, it appears that all of the services, 27,198, could have been reproduced under the same circumstances for approximately \$419,325, to which must be added \$5,166 for service governors, making a total value for services of \$424,491. Adding to this the allowance for overhead charges of 17.6 per cent. amounting to \$74,710, we obtain a gross valuation of \$499,200.

No. 319. Gas Meters.

No. 320. Gas Meter Installation.

Under Account No. 320, Interstate Commerce Commission Classification, Gas Meter Installations includes all the piping between the head of the service where it enters the building and the riser pipe of the building. Under the classification employed by The Public Service Gas Company, all of the piping between the street main and the connection on the inlet side of the meter and all of that between the connection on the outlet side of the meter and the house riser is included in services. A large part of the cost for gas meter installations as figured under the Interstate Commerce Commission Classification is therefore included by the Company in the cost of services and is contained in the value of the services based on the cost of services installed during the past eight years. The engineers making the valuations for the Company following the Company's classification, while Forstall & Robison followed the Interstate Commerce Classification and therefore the latter's valuation for gas meters and gas meter installations cannot be compared with the valuations of these items made by the other engineers until an allowance has been made for this difference in the classification.

In none of the valuations are the details given as to the costs of all the items classified under services in one case and under meter installations in the other. In Randolph's valuation, however, he gives the total cost of labor and material for setting meters, including meter cock, shelf and meter connections, as \$67,417. This carries the 10 per cent. General Contractor's Commission and dividing it by 1.1 the base amount is \$61,288. Forstall & Robison give for meter connections, including meter cock, \$46,607, and deducting this from Randolph's value for labor in setting meters, meter connections and cock, and shelves, there is left for labor and shelves \$14,681. Under the classification adopted by The Public Service Gas Company this is all that should be added for gas meter installations to the amount of account No. 319, gas meters, which already includes the cost of the meter connections, and the cost of testing, badging and painting the meters in the shop before they are sent out. On

this basis the different valuations for meters, meter connections, meter shelves and labor of setting meters only are

Randolph .....	\$473,276
Bartlett-Hayward .....	517,881
Stone & Webster.....	487,015
Forstall & Robison.....	489,204

The valuation of Bartlett-Hayward is much higher than any of the others and since their experience has been rather with the construction of manufacturing plant than with the installation of distribution systems their estimate may be disregarded. The average of the other three appraisers is \$483,165, while if the values of Randolph and Stone & Webster are averaged and this average then averaged with valuation of Forstall & Robison, the resulting figure is \$484,674. This figure we accept and add to it the allowance of 17.6 per cent. amounting to \$85,302, giving a gross valuation of \$569,976.

#### No. 321. Municipal Street Lighting Fixtures.

The valuations were as follows:

Randolph .....	\$2,804
Bartlett-Hayward .....	3,050
Stone & Webster.....	4,102
Forstall & Robison.....	2,796

The average of all four appraisals is \$3,188. Adding to this the allowance of 17.6%, amounting to \$561, we obtain a gross valuation of \$3,749, which we accept for this class of property.

#### SUMMARY OF DISTRIBUTION SYSTEM.

No. 317. Trunk Lines and Mains,	
No. 317a. Paving over mains.....	\$1,392,345
No. 318. Services,	
No. 318a. Paving over services.....	499,200
No. 319. Gas meters,	
No. 320. Gas meter installation.....	569,976
No. 321. Municipal Street Lighting Fixtures.....	3,749

Total .....	\$2,465,270
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#### WORKING CAPITAL.

In Exhibit No. 4, Valuation of Property, made by William W. Randolph, allowance is made of \$250,000 for working capital—this allowance to provide for “reasonable stocks

of meters, pipes, fittings, stored supplies, stable and automobile equipments, gas sold and not paid for and sufficient cash to meet the ordinary requirements of the business.

It should be noted that elsewhere in Randolph's appraisal stable and automobile equipments are given a valuation. In testimony of Edward W. Bemis, page 14, working capital is placed at \$200,000. The estimate made by Bemis gives the details on which his estimate is based, but we are inclined to feel that sufficient allowance has not been made by him for plant under construction and for gas in holders, and we therefore accept the figure of \$250,000 as a fair estimate of the working capital required in the Passaic Division.

No. 301. Organizations.

No. 302. Franchises.

No. 303. Patent Rights.

No. 304. Other Tangible Gas Capital.

No. 327. Law Expenditures During Construction.

This group of items is best treated together. As no claim is made for No. 303, Patent Rights, we may dismiss further consideration thereof. We find the fair value of No. 303 for rate-making purposes to be nothing at all. Nos. 301, 302 and 327 will be treated after the analysis of No. 304.

Under No. 304, "Other Intangible Gas Capital," we shall discuss "Going Value" or "Going Concern Value." We use the two terms here as synonymous. We may, for convenience, note the definition of this term suggested by Mr. Bergen, counsel for the Company, as "Value of the plant and business as a whole in excess of the value of the special franchise and cost of the tangible plant" (Evidence, p. 177). Mr. Royce's definition of the term varies in some respects from this definition (Evidence, p. 1425). However, his inclusion of franchise value, if any, and his exclusion of "quick assets," or "working capital," are to be noted. Mr. Forstall, in testifying, acquiesced in counsel's calling this element of value "development value" (Evidence, p. 97), "the cost of getting the business" (Do., p. 98), "a development charge" (Do., p. 98); but in his later testimony used the term "going concern value" (Do., p. 2214). Mr. Forstall's consistent conception of the term is the excess in value a gas property in operation

has over a similar gas property with the same or similar structures but without consumers attached (Do., pp. 98 and 2214). Mr. Alter S. Miller, of Humphreys and Miller, Inc., speaks of "the cost of reproducing the business" (Do., p. 1437), and his analysis of items therein included indicates what he covers under "cost of reproducing the business." However the various conceptions of going concern value may fail of precise coincidence, they all have a common core. This is the value a utility property has, or may have, over and above the value of its tangible belongings.

At the very outset two questions arise that require answer:

*First*, can a public utility have any excess in value over and above the value of its tangible belongings? This query moreover presupposes that the excess value, if any, is wholly distinct from any capitalized earning power predicated on a future setting of rates higher than required to afford a just return.

*Second*, in case it transpires that such excess value, known as "going concern value," exists, and in case the costs involved in the acquisition of such value have been met out of rates exacted from consumers, should such excess value, known as "going concern value" enter into the base upon which public utilities are entitled to earn a fair return?

Our answer to the first query is in the affirmative. There is such a thing as "going concern value." Mr. Forstall testified (Evidence, pp. 98 to 104):

"A plant with business attached has a value greater than the value of the mere plant without the business attached. \* \* \* Now you don't get the business by simply putting in a physical plant. The getting of the business is entirely a separate thing. You have got to either spend actual money, or lose interest on your investment for a long time. There is no gas business that ever started new that made money right away."

The "going concern value" will then be largely represented by the cost of developing the business as distinct from the cost of securing the physical structure. This going concern value may include the cost of soliciting business, cost of

advertising, cost of inducing consumers to take service, cost of exhibiting appliances, cost of occasional free installation, and also the dearth of adequate returns during the early developmental years of the Company. Depreciation unearned in this period may also sometimes be included in "going concern value." Indeed the term "going concern value" or "going value" may be employed to cover the total value of a company's property over and above structural value. This is the sense in which Mr. Royce used the term "going value," except that Mr. Royce would group working capital separately, and would deduct both it and structural value from total value to arrive at "going value." Mr. Bergen excepts franchise value from "going value." As regards the nature of this element, we agree with Commissioner Erickson, of the Railroad Commission of Wisconsin, who has said: "These outlays are in the nature of investments, and are as real, and as a rule as necessary as the investments in the physical plant. Since these outlays are in the nature of investments, it would also seem that they should be treated as such. In fact, to so treat them is usually both necessary and just." See also the comments of the Supreme Court of Oklahoma in *Pioneer Telephone and Telegraph Co. vs. Westenhaver*, 118 Pac., 354.

The second query raised asks whether such "going concern value" should be included in the base on which public utilities are entitled to a fair return, in case the costs involved in developing such going concern value have been met out of rates exacted from consumers. To this our answer is also in the affirmative, so far as it does not appear that the rates exacted from consumers were legally challenged. If, in the past, this gas company, out of the rates exacted from consumers, had met its operating expenses and depreciation, and in addition thereto had obtained enough to pay returns to investors, and to build an actual structure used in the business, would this structure aforesaid be the lawful property of the company? The answer, it seems to us, must be in the affirmative. If the Company had paid out, in addition to other payments to investors, dividends equal to the cost of building this structure, and then had issued additional

stock in value, equal to the cost of this structure, in order to repossess itself of the money required to build it, there can be no doubt that the structure built out of the proceeds of the additional securities thus sold would be the lawful property of the Company. It would be none the less the Company's lawful property if built out of current earnings without the issue of additional securities.

Under the present regulation by the Commission, it is doubtless true that net additions to a company's plant must be charged to capital account. Under the present regime of regulation of rates and regulation of accounts, it would be grossly improper first to charge new construction up to operating expenses, and defray its cost therefrom, and thereafter to capitalize such net additions, and include them in the base on which a company is entitled to earn a fair return, but we see no escape from the necessity of recognizing the intangible property designated as "going concern value," as well as actual physical structures similarly obtained as constituting part of the present lawful possessions of a public utility, even though both these tangible and intangible values were built up in the past out of rates exacted from consumers.

In the present case there have been cited a number of methods of estimating "going concern value." These estimates range from Professor Bemis' estimate of \$171,000 (which he designates "possible allowance for preliminary and development expenses") to the estimate made by Messrs. Humphreys and Miller, Inc., of \$1,689,316 (designated by them "cost of business"). Mr. Frederick P. Royce, Vice-President of the Stone & Webster Management Association, arrives at a valuation of thirty per cent. upon structural value (Evidence, p. 1787). In connection with this case, three rule-of-thumb methods have been referred to. One of these assumes a going concern value of \$30 per meter. This would make the going concern value approximately \$1,500,000. Another of these rough and ready methods estimates going concern value at three times the net annual income. This would make the going concern value, or development cost, equal to \$1,597,318. The last of these three summary



methods estimates going concern value or development cost at one and one-half times the annual gross income. In this case, this would give the sum of \$1,538,902. It is interesting to note, though this is purely *obiter*, that Mr. Leonard Metcalf, in the Transactions of the American Society of Civil Engineers, paper No. 1105, p. 31, in discussing "going value" of water works, remarks:

"In the writer's experience, the going concern value has usually been found to be between the net and the gross income of the plant for a period of one year (at the date of taking). It may be largely affected, however, by the period required for the 'development of the business.'"

Still another method suggested by Mr. Alfred E. Forstall would make the going concern value to range between \$900,000 and \$1,000,000 (Ditto, p. 2216).

We may dismiss the various rule-of-thumb methods without further comment than to say that there is no persuasive evidence that they apply to the case at bar.

The estimate presented by Messrs. Humphreys and Miller was posted in part upon a land valuation of \$400,000 not made by themselves but furnished them as a datum. This estimate we believe to be a very large exaggeration of the fair value of the land in question. Our reasons for rejecting this land valuation are set forth in another part of this Report. Messrs. Humphreys and Miller have built their elaborate and ingenious estimate in part upon the assumption that three full years would be occupied in building the plant and distribution system, and *that during this three-year period no gas would be delivered to any customer* (do., p. 1468), and that in the next subsequent period of six years the business would be acquired equal to that now possessed by the Company. From the testimony of Mr. Frederick P. Royce, Vice-President of the Stone & Webster Management Association, who was called by the Company as its witness, we infer (Evidence, pp. 1780-1782) that this method of deferring the delivery of gas until the plant should be wholly completed would be unnecessarily expensive and wasteful. Mr. Royce says: "The loss in early operation should be reduced to a minimum, because that is one of the greatest places where losses can occur" (do., p. 1780); and again (p. 1782):

"It might be interesting to say, in connection with that point, that we have now one power development under way, which will not be ready to furnish current for a year or more, and yet for a year past and at the present time we have a very large force of men on the commercial end developing the business, attracting power users to the vicinity, so that when they are ready to start we will have some business to start with" (p. 1782). Mr. Chas. W. Hunter, also connected with The Stone & Webster Engineering Company, a witness called by The Public Service Gas Company, in reply to a question as to the time required to complete this plant (*i. e.*, in the Passaic division) said:

"I estimated that at the end of a year and a half you would turn gas into as much of the gas main system as was then laid, and that in another year you would complete the rest of the main system." (Evidence, p. 1326.)

Obviously, gas delivered at the earliest date economically practicable, even though delivered in advance of the entire completion of the plant and distribution system, would reduce the expense of developing the business. While the comment is wholly *obiter*, we may remark here that in a case now pending before this Commission (*Gately & Hurley, et al, vs. Delaware & Atlantic Telegraph & Telephone Company*) the engineers of the Bell interests in constructing their careful and elaborate study of the cost of reproducing the business of the company, have assumed that service would be progressively afforded in some considerable measure before the entire plant was completed, and that revenues from customers in this period would decrease the otherwise greater cost of developing the business of the company.

We are finally of opinion that Messrs. Humphreys and Miller's estimate of the cost of reproducing the business cannot be accepted as controlling in the present case. Our reasons are: first, that their estimate is based upon an excessive valuation of portions of the physical property, notably the land; second, that the two periods embraced in their estimate ought to have been partially telescoped, the latter end of the construction period overlapping the beginning of the six-year period in which they assume the business is acquired; and third, because the method itself of estimating

the cost to reproduce the business is necessarily so hypothetical that it cannot readily be tested by the touchstone of reality. This rejection of their estimate does not imply any imputation of lack of competence or of fairness upon the part of these experienced experts, nor any discrediting of the Wisconsin model which they have used in making their estimate. As we understand it, the Wisconsin method generally takes historical data, as to costs of construction, extensions, revenues and expenses, whereas the corresponding items in the estimate of Messrs. Humphreys and Miller are in large part estimates, not transcripts of actual accounts. The fact seems to be that in ascertaining the fair value upon which a public utility is entitled to a fair return, the cost of reproduction method is of varying serviceability. Where it is employed to estimate the value of apparatus which is currently used and freely reproducible, the cost of reproduction is often indispensable. When the attempt is made, however, to apply the same method to afford light upon the value of land, the cost of reproduction method is difficult, in some cases impossible, of application. When the same method is applied to throw light upon the cost of reproducing the business, or in general, to the question of intangible values such as going concern value, its serviceability is very seriously impaired, and may readily become practically *nil*.

If we find it impossible to accept the maximum estimate of going concern value as embodied in the figures of Messrs. Humphreys and Miller, we find it also impossible to accept the minimum estimate of Professor Bemis of \$171,000 as a "possible allowance for preliminary and development expenses."

Professor Bemis has built this estimate upon the assumption that any "preliminary development expenses or early overhead charges" would surely be confined to the first million dollars of investment and to sales of the first two billion feet of gas in the first twenty or thirty years of life of the companies in the Passaic District" (Prof. Bemis' valuation, p. 15). He allows, accordingly, 12% on the first \$1,000,000 of investment, or \$120,000, and also for new business expense

at \$2.55 per M. on the first 2,000,000,000 feet of sales, or \$51,000. His total accordingly is \$171,000.

There is no evidence to show that in this case, or in cases generally preliminary development expenses or early overhead charges would be confined to the first million dollars of investment. Why limit such charges to the first million of investment? or indeed why extend them beyond the first hundred thousand dollars of investment? Such an assumption is purely arbitrary, and unsupported by evidence. It must therefore be rejected. If there be an intangible value, such as going concern value, legally a part of the company's property, it seems to us more reasonable to appraise it, in the absence of evidence to the contrary, as some proportion of the present investment of the company than as a proportion of the investment of twenty years ago. If it be argued that preliminary and overhead charges appertain more specifically to the early years of a company's operation, the rejoinder is not wholly unwarranted that similar charges are not impossible or improbable in later years; especially when these later years have witnessed combinations of earlier properties and great extensions of their operations. Moreover, the fact that approximately forty per cent. of the company's send-out represents business acquired within the past decade would indicate that the cost of acquiring new business must have been relatively heavier than in the earlier years of the production of gas in this district. It is true that the cost of new business in this last decade has been charged to operation and paid out of rates. But as we have indicated above, the business thus acquired must be regarded as a legitimate part of the property of the company. We cannot equitably project back into the unregulated past a norm of prices that might to-day be regarded as fair and adequate, and assume that actual rates exacted in the past, in so far as they exceed what are now deemed fair, have not lawfully become the property of the company. If these high rates in the past have been employed by the company to acquire an intangible property in the shape of extensive patronage, that expectation of patronage is theirs, and on its fair value the company is entitled to a return. It may or may not be a subject

of regret that regulation was so long deferred; but deferred regulation is no excuse for refusing at present to allow a fair return upon what is the lawful property of the company.

The estimate for "going concern value" by Mr. Frederick P. Royce, of Stone and Webster, places "going concern value" at thirty per cent. of "the structural value of the plant" (Evidence of Mr. Royce, p. 1787). The valuation which we accept for structural value is lower than the figure placed thereon by Messrs. Royce and Hunter. If we take as a basis our estimate upon undepreciated structural value, including land, but excluding working capital, as of July 1st, 1911, amounting to \$3,675,964, we find thirty per cent. thereof to be \$1,102,789. It does not appear clearly in the evidence that Mr. Royce or Mr. Hunter has set a definite figure calculated in dollars and cents on "going value". Mr. Royce testified that he hesitated "to name an exact figure for an intangible value of this kind" (Evidence, p. 1776). If we take their total valuation of plant at \$4,365,910 (excluding working capital, as we must do, according to Mr. Royce's evidence (p. 1425), then thirty per cent. of \$4,365,910 or \$1,309,773 plus thirty per cent. of their figure for land (which is indeterminate) would represent their specific estimate for "going concern value." This is less than Mr. Bergen's estimate of Mr. Royce's estimate of development cost (p. 101 of Mr. Bergen's brief); but we think that Mr. Royce's thirty per cent. should be taken upon his own estimate of structural value, not upon Mr. Randolph's estimate increased by certain allowances for preliminary expenses, as is done on page 99 of Mr. Bergen's brief. We can, however, say with certainty that Mr. Royce's estimate for going concern value in the present case would be upwards of \$1,309,773; and assuming him to accept the company's figure of \$400,000 for land, it would apparently not exceed \$1,429,773. Roughly, then, on this basis of taking thirty per cent. of structural value as an estimate of the going value of the company, it would fall between \$1,000,000 and \$1,425,000, according as the Commission's figures or Mr. Royce's figures of structural value are accepted.

We are impressed with the evident solidity of Mr. Royce's testimony as to the ratio of going value to structural value.

In order that there may be no mistake as to what he includes in going value, his own definition, explicitly asked for as a definition, should be recorded as given on p. 1425 of the evidence. It includes "*practically all elements of value which the company may possess outside of its actual structural value and the tangible worth or value of its quick assets.*"

Asked explicitly by Judge Armstrong: "You include in that whatever value would attach to the franchise value of (or?) advantage for the value of a going business, a live business, producing a profit; the prospective increase, and the opportunity for the investment of additional capital in enlargements, and all that would you?", Mr. Royce answered: "Yes, sir, and the value that comes, when a plant is properly handled, of getting the apparatus itself into such shape that it may be worked at its point of greatest efficiency. . . ." (Evidence, pp. 1425, 1426.)

Recalled, Mr. Royce, being asked if his compilation of costs takes into account "the preliminary costs of the party which went to look over the field and of organizing the business or of getting their franchises," he replies that he is speaking of "the company ready to do business," but adds, correcting himself or explaining himself, that it applies "either before or after" the construction of the plant (Evidence, p. 1789).

We must bear in mind the definition given by Mr. Royce himself, when asked specifically to define the term "going value," as "practically all the elements of value which the company may possess outside of its actual structural value and the tangible worth or value of its quick assets." (Evidence, p. 1425.) With this definition of "going value" we must compare his matured statement that he would say "without any question that the minimum of the going value of the property would be the sum of those three items, or perhaps thirty per cent. of the structural value of the plant; and roughly speaking, and considering that we are to take up a new proposition of this kind I think we should have to spend that amount in the variation of the going value." (Evidence, p. 1787.)

Structural value, according to Mr. Royce, includes contractor's profit on structures. His estimate of thirty per cent. moreover is a minimum (Evidence, p. 1787); but "for purposes of this kind that would be about a fair basis" (Evidence, p. 1862). He testified out of a wide experience that this is a fairly common or average allowance for going value. He testified that in the case of this particular company:

"I believe that the actual cost of developing, of getting the new business, and of creating efficiency in operation, together with some losses, during the various periods of construction, has been at least thirty per cent. of the actual structural cost."

He was unshaken on cross-examination, and made clear that this percentage applied not merely to the structural

cost with which a company might start in business, but to the structural cost of extensions as well (Evidence, p. 1849). He is also on record that this value of going concern does not suffer depreciation (Evidence, p. 1865), but is fully as stable as real estate (Evidence, p. 1866). In the absence of accounting records going back more than about a dozen years, and in view of the very wide expert experience underlying and supporting Mr. Royce's testimony, we incline to think that thirty per cent. of present structural value, new, may well be taken as a fair presumptive measure of the total going concern value of the company. This thirty per cent. is to be taken on the fair structural value, new, of the company's plant and distribution system, working capital being excluded.

Mr. Forstall testified that he regards going concern value as a market value and not a cost value (Evidence, p. 2231). We understand him to mean that going concern value is what a utility property would fetch from a buyer in excess of the cost of the physical property. Mr. Forstall testified also that the number of consumers a company has is one of the best measures of going concern value (Evidence, p. 2214). He said that it is comparatively easy to determine the minimum below which going concern value can never go (Evidence, p. 2215). This minimum basis is computed by taking annual interest and depreciation at a fair rate upon the cost of plant which is converted by customers from a dead asset to a revenue producer (Evid., p. 2215). In the present case, Mr. Forstall finds the investment per customer as of October 1st, 1911, to be practically sixty dollars. At eight or ten per cent., the corresponding minima of going concern value are roughly five dollars and six dollars respectively per customer. The total minimum would be therefore either \$250,000 or \$300,000.

The remainder of the going concern value would involve some assumption as to the rate of charge that may be reasonably expected under regulation by Commission. The anticipated net earnings being roughly estimated (on a basis consisting of the value of the physical plant and the minimum of going concern value) it is assumed that such a concern

could be financed by five per cent. bonds selling at ninety whose interest would be two-thirds of the anticipated net earnings. The remaining capitalization it is assumed must be represented by stock yielding ten per cent. The excess of the bond and stock issues over the cost of the physical plant will give the going concern value (Evid., pp. 2218, 2219). This method would give in the present case a going concern value of between nine hundred thousand and a million dollars (Evid., p. 2216).

This plan for estimating going concern value for a bond house or an intending purchaser is excellent. But its availability for a Commission seeking to set a fair rate is the less, because it depends for one of its premises upon the assumption of a rate likely to be fixed by the Commission.

On the other hand, the result this method reaches in the present case of between \$900,000 and \$1,000,000 checks up rather closely with the result we reach on Mr. Royce's method of taking 30 per cent. upon our value of the structural plant. If we allow that going concern value is depreciable, and this is Mr. Forstall's opinion (Evid., p. 2,230), the difference between Mr. Forstall's estimate and the Commission's estimate based on Mr. Royce's percentage is fairly close, considering that we are estimating upon intangibles in a necessary twilight, owing to the absence of records appropriate for our purpose for the past twelve years, and of all records for the previous half century. We, therefore, find the total value of the company's intangible property, as of October 1st, 1911, including under this caption all property over and above tangible or physical property separately estimated, to be of a fair value of One Million and Twenty-Five Thousand Dollars (\$1,025,000). This sum is the approximate average of \$1,102,789 (found by taking 30 per cent. of our appraisal of structural values less working capital) and of the medium of Mr. Forstall's upper and lower estimates (\$950,000).

Our finding of One Million and Twenty-Five Thousand Dollars as the value of all intangible property of any kind involved in the present case is all inclusive. It is intended to cover and does cover the value of all the company's property upon which they are entitled to a return, except only



the physical, tangible or structural plant, and associated plant assets, such as working capital. Under this appraisal, therefore, we include everything that may be claimed by reason of preliminary or developmental outlay, including preliminary engineering and legal expenses, canvassing, incorporation costs, securing franchises, organization expenses to supervise expenditures during construction; all financing, bankers' commissions, discount on bonds, promoters' profits, preparation of mortgages, bonds or other securities, and the engraving of the same. We also include under said finding of the total value of intangibles all allowances properly to be made for all elements of cost arising during the early years of operation or thereafter, such as early deficits, if any, and inadequate early returns upon investment. And we expressly include under said finding as to the total value of intangibles the entire value of all franchises, primary or secondary, possessed or exercised by the company in the Passaic Division; and also each and every other element of intangible property belonging to the company and used and useful in supplying gas in the aforesaid Division. For good will, we allow nothing whatever. The company, we understand, makes no claim for good will. It seems well settled also that where a particular service is furnished by only one company within a given area, the option of patronizing a rival public utility is absent; and that under the circumstances, good will, or the value of voluntary patronage where a competing service is available, does not exist. *Willcox vs. Consolidated Gas Co.*, 212 U. S. 19, 52; also *Spring Valley Water Works vs. San Francisco*, 192 Fed. 137, 168.

It is quite obvious that our finding as to the total amount of intangible property (\$1,025,000) is tantamount to including the franchises of the company at a moderate rating, at a value comparable with the cost of obtaining these or similar franchises. It amounts, therefore, to a practical denial of the company's contentions as to the value of its franchises. The figure claimed for franchises by Mr. Bergen, counsel for the company, on p. 15 of his brief, of \$1,392,235, considerably exceeds our appraisal of the company's entire intangible property. The contention made by the company

that the par values of securities originating in the merger and consolidation of February 6th, 1899, of various gas and electric companies in this district set or determine an amount below which our aggregate valuation may not fall is expressly denied.

The method we adopt for estimating the fair value of intangible property exempts us from a separate appraisal of the company's franchises. Their inclusion in our total on an applied valuation of what it would cost to obtain such franchises makes it hardly necessary to canvass the considerations urged by Mr. Merrey, of counsel for Paterson, against their validity. Had we been obliged to compute separately the fair value of the franchises, we should have been compelled to estimate the presumable cost of obtaining similar franchises. Had there been evidence that these franchises, or any of them, were exclusive of similar grants to would-be competitors; or had there been any evidence that these franchises or any of them, conveyed an exemption from taxation, or a right to collect specified rates or tolls from consumers, or otherwise created a property right capitalizable against the public, due allowance would have been made therefor. There is no evidence of any of these things. There is no evidence of what these franchises cost the company, or the various constituent companies merged into the Paterson and Passaic Gas and Electric Company. There is no specific evidence that any of these franchises has a specific value stated in terms of dollars and cents. In the present case there is no persuasive evidence that the franchises in question do more than convey permits for the location of apparatus such as mains upon public property. It is well known that it is the public policy of the State of New Jersey at present not to allow the capitalization of franchises for an amount in excess of the actual cost involved in obtaining said franchises. That this is a wise and equitable policy we think is incontestable. One of the characteristic features of a public utility such as a gas company is that it does not possess, and ordinarily cannot afford to purchase, the land requisite for the location of its distributing apparatus. When by its secondary franchises such permits to locate are granted to

a company without other expense than the necessary business and legal costs of securing municipal consents, it seems unthinkable, as a matter of equity and public policy, that the easements gratuitously granted should be made the basis for an additional charge to be imposed upon the grantor. Even when taxes are imposed upon public utilities under the guise of franchise taxes, the taxes so imposed are commonly treated as an operating cost by the utilities, and are recouped out of the rates paid by consumers in much the same fashion as the company's other operating costs. How the company's payment in the first instance of a tax which is promptly shifted to the consuming public gives any color to the claim that the company is entitled to capitalize a franchise against the grantor and to obtain a distinct return thereon we are unable to see.

There are virtually two contentions raised by the company to establish the aggregate value of these franchises. The first is based upon the capitalization agreed upon in 1899 when six different concerns merged and consolidated into the Paterson and Passaic Gas and Electric Company. The second is based upon what, it is contended, are relevant adjudications especially in the case of *Willcox vs. Consolidated Gas Company*, 212 U. S. 191.

In 1899 six gas and electric companies consolidated, creating the Paterson and Passaic Gas and Electric Company. The capitalization of the latter was \$5,000,000 in stock and \$5,000,000 in bonds. Of this approximately all the stock and \$4,100,000 of the bonds were used in effecting the consolidation. From the final report made to the Commission by Marvyn Scudder, accountant, (page 5 of Utility Exhibit, No. 1 for June 10, 1912) it appears that over and above \$2,224,100 issued to the United Gas Improvement Company for "sundry claims and franchises," the excess of par value of stocks and bonds issued over the par value of stocks and bonds received was \$3,893,691. We have no evidence to show what the true value was of the sundry claims and franchises of the United Gas Improvement Company, but as the U. G. I. Company, under the arrangement, received in bonds \$764,000, it may perhaps be surmised that not all of the \$1,460,100

in stock received by that company was represented by then extant property of an equivalent value. If this stock was all bonus, and if the excess in securities received by the six merging companies was similarly bonus, it would seem that the consolidation involved a total of \$5,353,791 in securities based on anticipations rather than solid assets; and of the capitalization here involved, it is agreed that approximately two-thirds are applicable to the gas properties. Whatever the precise amount of water that was injected into securities resulting from this consolidation, the Company claims that "these securities have been issued under due form of law, that they have been scattered far and wide all over creation, and people have paid for them with honest money"; and that the Commission, while it should not allow any rate like ten per cent. thereon, should "stamp five per cent. on the bonds, and five per cent. on the stock," and treat the money behind that (i. e., cash subsequently invested in the property) as "genuine money." (Evidence of Pres. Thomas N. McCarter, p. 2,133.)

But in *Smyth vs. Ames*, 160, U. S., 466, the Supreme Court says:

"If a railroad corporation has bonded its property for an amount that exceeds its fair value, or if its capitalization is largely fictitious, it may not impose upon the public the burden of such increased rates as may be required for the purpose of realizing profits upon such excessive valuation or fictitious capitalization; and the apparent value of the property and franchises used by the corporation, as represented by its stocks, bonds, and obligations, is not alone to be considered when determining the rates that may be reasonably charged."

If additional evidence were necessary to demonstrate that the capitalization resulting from the aforesaid consolidation was in excess of the real assets or property of the acquiring company, the lease of June 1, 1903, of the property of the Paterson and Passaic Gas and Electric Company to the Public Service Corporation is pertinent. Said lease provided for payment as rental of interest on the bonded debt, and an amount equivalent to dividends on the stock of the Paterson and Passaic Gas and Electric Company for the first year of *one and one-half per cent*; for the second year of *two per cent.*, and for each subsequent year of an additional half per cent.,

until eventually five per cent. was reached. At this rate it remains fixed for the remainder of the lease. If at the time of the lease, the property taken over by the Public Service Corporation in excess of the bonded indebtedness was represented by assets of value equivalent to the stock created by the consolidation, why was so low a return accepted by the constituent companies, or how was the Public Service Corporation able to induce the lessors to accept so meagre a return as rental upon the stock of the newly created company? All the evidence points to an unmistakable inflation of securities, resulting from the consolidation. N. B. case of Ridgewood.

Moreover, in the subsequent lease of the Ridgewood Company to the Public Service Gas Company, the latter while guaranteeing five per cent. on the bonds of the Ridgewood Company, guaranteed only two per cent. on the stock of the Ridgewood Company. If the stock of the Ridgewood Company then issued (amounting to \$100,000), represented property of equivalent value, how explain the guaranteed return of but two per cent. upon the stock in question?

We assume that both at common law and now in this State by statute a public utility assumes the responsibilities of furnishing safe, proper and adequate service at reasonable rates, and that it undertakes its business with the explicit knowledge of the State's right and power to set reasonable rates; that any capitalization it effects is effected subject to the State's reserve power in the premises; and that it cannot plead its capitalization nor any contracts it may have undertaken as barring the State's exercise of its power as to rates. When, moreover, the capitalization, albeit legal, is demonstrably in excess of the value of its assets at the time of capitalization, the public utility cannot cite its unchallenged capitalization as a bar to the State's exercise of inherent prerogative to set proper rates. We cannot, therefore, agree with Mr. Bergen, of counsel for the company, in his contention, in his brief of December, 1911, pp. 62, 63, where he says: "When a corporation has been created by a consolidation agreement made by pre-existing corporations, the value of the property, including special franchises of

these corporations, put upon it by their directors and paid for by the consolidated company either in cash, or by its bonds and stock, cannot be questioned except for actual fraud in the transaction."

It is true that in his final brief (p. 69) Mr. Bergen says:

"I do not claim that a corporation engaged in public service can frustrate or escape rate regulation by issuing stocks and bonds that do not represent value. That was distinctly held in *The Knoxville Water Company* case, 212 U. S. p. 1. All I can claim is that stocks and bonds lawfully issued cannot be destroyed nor their value impaired by means of rate regulation. To do so would be to take private property without just compensation."

Apparently the contention is that the stocks and bonds of the Paterson and Passaic Gas and Electric Company "represent value," because "ascertained by a lawful method, at the time when the consolidation agreement was made." If it should be urged that the valuation placed upon the real estate, structures and distribution system of the company by the tax assessors represent value, because it also is ascertained by a lawful method, and that this value should be taken as the base on which the company is entitled to earn, the company would certainly demur. The fact, as it seems to us, is plain, that while shareholders may be bound by a valuation placed by directors upon property for which stock is issued, this valuation is not necessarily controlling for other purposes, for condemnation or for taxation.

The contention that the aggregate face value of the securities originating in the merger and consolidation of February 6th, 1899, cannot be questioned in a rate-making valuation we believe is wholly unfounded. If the value of the company's property originally equalled the face value of securities, but if the present fair value of their property used or useful in serving the public has grown to exceed the par of these securities, or has diminished so as to fall short of the face value of the securities, it is the fair value of the property, not the face value of stocks and bonds that must control. If the value of the company's property never did equal the face value of the securities, the case is, if anything, stronger for looking to the value of the property and not to the nominal value of the securities to find a base for fixing rates.

There remains the contention raised by the company as regards the valuation that must attach to its special franchises under the decision in the case of *Willcox vs. Consolidated Gas Company*, and other decisions cited. That special franchises are property is, of course, not disputed. That they must be regarded as part of the property used in public service is admitted. That when tangible property is operated under franchise rights, the instrument of public service is worth more than the material and labor involved in its construction is conceded. Without the franchise the placement of the apparatus on public places would be trespass, and the structural plant could have little besides a junk value. That the State's reserved powers to alter corporate charters cannot annihilate property lawfully acquired by a corporation is self-evident. Even certificates of incorporation, it may be conceded, for the sake of argument, are equivalent to a legislative act of incorporation. That taxation is imposed in respect of special charters as property in this and other States is also admitted. It might even be granted that a tenuous non-monetary consideration is impliedly paid by a franchisee when he takes his franchises, in that he assumes some responsibility for affording the public proper service under his franchises. Moreover, it is granted, of course, that neither franchises nor any property can be taken for public use without just compensation. But resolving every one of these points in favor of the company's contention, the question arises what presumption, under the decision in the *Consolidated Gas* case, is raised by the original capitalization of the *Paterson and Passaic Gas and Electric Company* as to the value of the special franchises? Is such presumption, if any, inconsistent with our implied appraisal of its franchises at the fair cost of obtaining them or similar ones? Is there any warrant for setting upon the company's special franchises separately a figure remotely approaching the \$1,392,235 mentioned on page 15 of Mr. Bergen's final brief?

In the case of *Willcox vs. Consolidated Gas Company*, the pertinent facts seem to be the following: That company was organized under an Act passed by the New York Legislature

in 1884. Said Act authorized companies consolidating to fix in their consolidation agreement the capitalization of the acquiring company. It provided the amount of stock so fixed should not "be larger in amount than the fair aggregate value of the property, franchises and rights of the several companies thus to be consolidated." The value assigned specifically to "franchises and rights" at the time of this particular consolidation was \$7,781,000; and they were so entered and carried on the books of the Company. When after appeal the case reached the Supreme Court of the United States, that body decided (1) that an estimate of \$12,000,000 put by Judge Hough upon the then value of franchises, or over \$4,000,000 in excess of the original valuation made in the consolidation agreement, could not be conceded, but that only the original specific valuation of \$7,781,000 could be allowed; (2) that inasmuch as a committee of the Senate of New York appointed in 1885 had, after investigation, assumed "that the company would be permitted to charge the same prices in the future which in the past had resulted in these "enormous" or "excessive" dividends, it need not be a matter of surprise that a franchise by means of which such dividends had been possible was not regarded as overvalued in 1884"; (3) "that under the above facts, the courts ought to accept the valuation of the franchises fixed and agreed upon under the act of 1884 as conclusive at that time"; (4) that "what has been said herein regarding the value of the franchises in this case has been necessarily founded upon its own peculiar facts, and the decision thereon can form no precedent in regard to the valuation of franchises generally, where the facts are not similar to those in the case before us. We simply accept the sum named as the value under the circumstances stated." *Willcox vs. Consolidated Gas Co.*, 212 U. S. 18, sq.

The case before us differs from the Consolidated Gas case (1) in that no specific or particularized estimate, valuation, or appraisal of special franchises was contained in the consolidation agreement under which the Paterson and Passaic Gas and Electric Company was formed; (2) in that there appear to have been no circumstances of publicity similar to



the investigation in 1885 of the committee of the Senate of New York to create any presumption as to the value of the special franchises in the case at bar. The mere filing with the Secretary of State of a certificate of incorporation stating the capitalization of the consolidated company created no presumption as to the value of any specific assets such as the special franchises.

There appears to us to be no persuasive evidence of any description that the special franchises of the Paterson and Passaic Gas and Electric Company ever amounted in value to any specified sum of money; that they were ever separately appraised at any specified amount; that they ever exceeded or do now exceed the reasonable sum necessary to obtain comparable franchises by such expenditure as may be needed to cover the requisite legal and other legitimate associated charges of securing franchises, nor does it appear that their present value is not adequately covered and included with all other intangibles under the blanket charge of thirty per cent. upon our estimate of structural value (less working capital). So far as the capitalization of the Paterson and Passaic Gas and Electric Company is concerned, we obtain from that no light upon the value of the special franchises acquired. Like any other item of intangible property they constituted an unknown part of a total sum which total was in all probability far in excess of the then value of all items of property owned by the acquiring company.

The decision in *re. Wm. M. Donald et al appellants vs. American Smelting and Refining Co. et al.* (62 N. J. Eq. 729) does not seem to us to invalidate the position we have taken as regards either the special franchises, or the aggregate face value of the securities of the Paterson and Passaic Gas and Electric Company. It is true that it was there held that "after stock has been issued as full paid stock for property furnished, the judgment of the directors as to the value of the property becomes conclusive in the absence of actual fraud in the transaction, and such stock is not liable to any further call." In our judgment, this was intended to determine the rights of stockholders *inter se*, or the rights of stockholders as against directors. To allege that the judg-

ment of the directors as to the value of the property becomes conclusive in all respects whatsoever is manifestly going beyond what we conceive is the intent of the decision. Is their judgment, as embodied in the face value of the securities, conclusive also as regards the assessment of such stock for tax purposes? It would hardly seem probable. Still less probable is it that this valuation estops the State from setting rates, unless the State first acquiesces in the inerrancy of this face value as a basis upon which to set rates.

#### GENERAL SUMMARY.

Summarizing the amounts which we have accepted in the foregoing, we obtain as follows:

No. 300. Land .....	\$ 111,160
No. 301. Organization	
No. 302. Franchises	
No. 303. Patent Rights	
No. 304. Other intangible gas capital—cost of estab- lishing business	1,025,000
No. 327. Law expenditures during construction	
Manufacturing plant .....	1,161,550
Distribution system .....	2,465,270
Working capital .....	250,000

Total valuation as of October 1, 1911.....\$5,012,980

From report of Marvyn Scudder, May 27, 1912, it is found that during the first nine months of 1911 there was expended for construction approximately \$247,000. To correct the report as of July 1, 1911, we deduct the proportionate amount for three months' construction amounting to..... 62,000

This gives us a valuation as of July 1st, 1911, of.....\$4,950,980

#### PRESENT VALUE.

To obtain present value, it becomes necessary to deduct from the estimated cost to reproduce new, the accrued depreciation. Accrued depreciation may be obtained in several different ways, the most important of which appear to be two: Theoretical depreciation calculated by means of life tables, and depreciation ascertained by observation or inspection. An estimate of theoretical depreciation should properly include adequate allowance for obsolescence and inadequacy. Such estimates, however, must take into con-

sideration a great many suppositions and hypotheses, based very largely on speculation and prophecy as to what may be expected in the future. Coal gas generating machinery has now been in use for approximately a century. Water gas generating apparatus was developed about forty years ago. Coal gas machinery has been improved from time to time and made much more efficient, and later types have largely superseded those installed in earlier days. This is true, to a certain extent, of the water gas sets. Who can predict, however, the time when coal or water gas apparatus will be entirely superseded by some methods not yet invented, or even dreamed of? A correct allowance for depreciation, on the theoretical basis, must be sufficient to take care of obsolescence. Similar allowances must be made which will be sufficient to take care of plant retired because of inadequacy. Allowances for inadequacy involve *inter alia* an estimate of the growth in populations and communities served.

Depreciation by observation or inspection involves an estimate of the amounts required to place a given property in first-class operating condition, and even though a given plant may have been kept in such condition as to render entirely adequate service, there is still some depreciation due to ageing which is always existent, to a greater or less degree, in a property already in use.

In so far as physical property is concerned, it appears to be well settled that the proper valuation is the present value as obtained by deducting depreciation. We are confronted, however, with the contrasted methods of estimating depreciation referred to above, and we must decide whether theoretical depreciation or depreciation by inspection should be deducted. Undoubtedly an allowance for theoretical depreciation will much exceed the depreciation obtained in the other way. This leads us to an analysis of the history of the growth of public utility properties.

We believe that from this time forth allowance for depreciation should be made where possible, on the theoretical basis, but where depreciation has been charged off, the amount charged off appears to have been not theoretical depreciation, but merely amounts which would measure depreciation ascer-

tained by inspection. We, therefore, conclude that we are on certain ground when the allowance for depreciation which is deducted from the cost to reproduce the property new, is the amount representing the wear and tear and ageing, and when we do not attempt to estimate the greater amount which would allow for obsolescence and inadequacy.

The allowance for the valuation of the physical property cannot exceed the amount obtained by deducting from value new the depreciation as obtained by observation or inspection. This statement best explains why the accrued depreciation in the Forstall appraisal amounts to only about 6.2% of the value of the depreciable property.

Estimated depreciation .....	\$ 233,686
Value of plant already excluded.....	32,706

Additional allowance for depreciation.....	\$ 200,980
Total valuation (new) previously determined.....	\$4,950,980
Accrued depreciation to be deducted.....	200,980

Present value of property .....	\$4,750,000
---------------------------------	-------------

and this figure we accept as the present value of the property, and as the fair value of the property included in the base upon which a system of rates should be predicated.

Examination of the testimony in the present case shows that the only definite testimony before the Board with regard to accrued depreciation is found in Exhibit No. 1, the valuation made by Forstall & Robison. Their estimate as of January 1st, 1911, for the cost new was \$3,742,975. Their estimate of present value as of January 1st, 1911, was \$3,509,289. The difference, representing the accrued depreciation ascertained "by inspection" was \$233,686. In arriving at the valuation above, we have included only such items of plant and distribution system as are in use and useful in the service of the public. By this method of arriving at the valuation, there has been already excluded items amounting to \$32,706, and if we accept the estimate of accrued depreciation made by Forstall & Robison, we must deduct from the valuation as found above, the difference between the estimate of Forstall & Robison and the amount already excluded which gives us the result as found on the preceeding page.

## REVENUES AND EXPENSES.

Having determined the basis for valuation upon which to base a rate of return, we next give our attention to a computation of the amounts which the company should be allowed to collect in order to pay the operating expenses which they have been called upon to meet, an allowance for depreciation, and a fair return upon the investment. The valuation given above is of July 1st, 1911, and operating cost figures relating to one year would not be sufficient to determine the reasonableness of the matters under consideration. We have, therefore, computed a valuation for the property as of the corresponding date in each year for the years 1910 to 1906 inclusive. This has been obtained by a system of deductions in the following manner:

The total valuation (new) as of July 1st, 1911.....	\$4,950,980
Of this amount, Organization and other intangibles.....	\$1,025,000
Working capital .....	250,000
	<hr/>
Total, an amount of.....	\$1,275,000

We are of opinion that based on the principles employed in arriving at the valuation of the property, the items given above would have varied approximately in proportion to the number of meters connected.

Table II shows the method of arriving at the deduction which should be made from the valuation of the property in 1911 to obtain the valuation for each prior year.

TABLE II.

	1906	1907	1908	1909	1910	1911
Average number of meters in service during year.....	33,194	36,081	38,241	40,565	44,040	47,805
% number of meters in service during each year is of number in service during 1911.....	69.4	75.5	80.0	84.8	92.1	100.0
Rate % by which the valuation on July 1, 1911, of Working Capital, Organization and Other Intangibles, \$1,100,000, should be reduced to obtain valuation on July 1st each year .....	30.6	24.5	20.0	15.2	7.9	0
Amount by which valuation \$1,275,000 should be reduced in applying above rates.....	\$390,150	\$312,375	\$255,000	\$193,800	\$100,725	

The first item in this Table gives the average number of meters in service during the year.

Table III shows the amount of construction done during each year, and below is shown the method of obtaining the proportionate amount of accrued depreciation for each year.

TABLE III.

Total valuation, July 1, 1911.....		\$4,950,980
Organization and other intangibles.....	\$1,025,000	
Working capital .....	250,000	1,275,000
		<hr/>
Valuation (new) of physical property.....		\$3,675,980
Accrued depreciation, not already deducted.....	\$200,980	
which is 5.64 per cent. of value (new) of depreciable property, not including land or 5.47 per cent. of all physical property.		
July 1, 1911—Valuation of physical property.....		\$3,675,980
“ “ construction during year.....		295,782
		<hr/>
July 1, 1910— “ “ physical property .....		\$3,380,198
“ “ construction during year.....		330,665
		<hr/>
July 1, 1909— “ “ physical property .....		\$3,049,533
“ “ construction during year.....		224,946
		<hr/>
July 1, 1908— “ “ physical property .....		\$2,824,587
“ “ construction during year.....		122,080
		<hr/>
July 1, 1907— “ “ physical property .....		\$2,702,507
“ “ construction during year.....		144,655
		<hr/>
July 1, 1906— “ “ physical property .....		\$2,557,842
Depreciation at 5.47 per cent. on Physical Property—July 1st each year:		
1906—\$2,557,842 x .0547.....		\$140,042
1907— 2,702,507 x .0547.....		147,926
1908— 2,824,587 x .0547.....		154,579
1909— 3,049,533 x .0547.....		166,839
1910— 3,380,198 x .0547.....		184,860

Table IV gives the total of the deductions to be made from the valuation in 1911 to obtain the valuation of plant in each year.

TABLE IV.

Deductions from Valuations as of July 1st, 1911, to obtain Valuation July 1st each year.						
	1906	1907	1908	1909	1910	1911
1. Total Valuation, July 1, 1911.....						\$4,950,980
2. Total Cost of Construction from July 1 each year up to July 1, 1911.....	\$ 950,790	\$ 827,784	\$ 723,974	\$ 532,693	\$ 251,515	
17.6% Overhead .....	167,338	145,689	127,419	93,754	44,267	
3. Working Capital, Organization and Other Intangibles on basis of average number of meters in service .....	390,150	312,375	255,000	193,800	100,725	
4. Depreciation .....	140,042	147,926	154,579	166,839	184,860	200,980
5. Total Deductions .....	\$1,648,320	\$1,433,774	\$1,260,972	\$ 987,086	\$ 581,367	\$200,580
6. Valuation after deducting Depreciation July 1 each year .....	3,302,660	3,517,206	3,690,008	3,963,894	4,369,613	4,750,000



The first item in Table IV is the valuation (new) as of July 1st, 1911. The second item is the total cost of construction from July 1st of one year to July 1st of the next year, to which has been added, however, overhead allowances at the same rate, 17.6% used in making up the valuation of the property. This has been evolved from Table III. The third item is the deduction because of a less amount required for working capital, organization and other intangibles on the basis of the average number of meters in service, this having been taken from Table II. The fourth item is the proportionate amount of the total deduction for depreciation. The fifth item gives the total deduction from the valuation in 1911 to obtain the present value for each year preceding. The sixth item is found by deducting item 5 for each year from item 1.

Based on the valuation for each year given in Table IV, Tables V, VI and VII, have been constructed.

TABLE V.

	1906	1907	1908	1909	1910	1911
1. Valuation .....	\$3,302,660	\$3,517,206	\$3,690,008	\$3,963,894	\$4,369,613	\$4,750,000
2. Operating Expenses .....	379,243.73	409,954.44	422,301.96	427,867.31	466,051.45	493,495.73
3. Depreciation at 6c per M.....	46,997.57	50,360.06	52,788.00	57,728.22	61,629.64	63,032.45
4. 7% return on valuation.....	231,186.20	246,204.42	258,300.56	277,472.58	305,872.91	332,500.00
5. Total amount to collect.....	\$ 657,427.50	\$ 706,518.92	\$733,390.52	\$ 763,068.11	\$ 833,554.00	\$ 889,028.18
6. M. ft. gas sold.....	783,293	839,334	879,800	962,137	1,027,161	1,050,541
7. Unit sale price .....	82.1c	84.3c	83.4c	79.3c	81.2c	84.6c
	Average, six years, 82.7c					

TABLE VI.

	1906	1907	1908	1909	1910	1911
1. Valuation .....	\$3,302,660	\$3,517,206	\$3,690,008	\$3,963,894	\$4,369,613	\$4,750,000
2. Operating Expenses .....	379,243.73	409,954.44	422,301.96	427,867.31	466,051.45	493,495.73
3. Depreciation at 6c per M.....	46,997.57	50,360.05	52,788.00	57,728.22	61,629.64	63,032.45
4. 7.5% return on valuation ....	247,699.50	263,790.45	276,750.60	297,292.05	327,720.98	356,250.00
5. Total amount to collect.....	\$ 673,940.80	\$ 724,104.95	\$751,840.56	\$ 782,887.58	\$ 855,402.07	\$ 912,778.18
6. M. ft. gas sold.....	783,293	839,334	879,800	962,137	1,027,161	1,050,541
7. Unit sale price .....	86.0c	86.2c	85.4c	81.4c	82.7c	86.7c

TABLE VII.

	1906	1907	1908	1909	1910	1911
1. Valuation .....	\$3,302,660	\$3,517,206	\$3,690,008	\$3,963,894	\$4,369,613	\$4,750,000
2. Operating Expenses .....	379,243.73	409,954.44	422,301.96	427,867.31	466,051.45	493,493.73
3. Depreciation at 6c per M.....	46,997.57	50,360.06	52,788.00	57,728.22	61,629.64	63,032.45
4. 8% return on valuation.....	264,212.80	281,376.48	295,200.64	317,111.52	349,569.04	380,000.00
6. M. ft. gas sold.....	783,293	839,334	\$770,290.60	\$802,707.05	\$877,250.13	\$936,528.18
7. Unit sale price.....	88.2c	88.4c	879,800	962,137	1,027,161	1,050,541
5. Total amount to collect.....	\$790,454.10	\$741,690.98	87.6c	83.4c	85.4c	89.1c
Average, six years, 86.9c.						

These Tables include Item 1, Valuation in each year, as taken from Table IV. Item 2, Operating expenses for each year, 1904 to 1910, taken from Exhibit 12 and for 1911 taken from Exhibit No. 4, September 9th, 1912. Item 3, depreciation at 6% per thousand cubic feet. Item 4, return at a certain rate on the valuation already determined. Fifth item, total amount to collect. Sixth item, the number of thousand feet of gas sold in the year, and the seventh item, the resultant average unit sale price which would have enabled the collection of the amount found under Item 5.

Table V includes an allowance for a return of 7% on the valuation. Table VI is computed on a basis of  $7\frac{1}{2}\%$  return, and Table VII is computed on a basis of 8% return on the valuation.

Some explanation should be given for the adoption of the allowance for depreciation on a basis of 6% per thousand cubic feet. Table VIII is an estimate of the amount required for depreciation on the straight line basis, on a 2% sinking fund basis, and on a 4% sinking fund basis.

TABLE VIII.

Expectation of Life in years	Service Value of parts in Dollars at Basic Figures	Add 17.6 per cent for Over-head Charges	Total Service Value of Parts in Dollars	Annual payments to cover estimated future depreciation		
				Straight Line	2 per cent Sinking Fund	4 per cent Sinking Fund
10	\$ 14,730	\$ 2,592	\$ 17,322	\$ 1,732	\$ 1,582	\$ 1,443
15	34,923	6,144	41,067	2,738	2,377	2,051
20	156,952	27,623	184,575	9,228	7,594	6,197
25	81,104	14,274	95,378	3,815	2,977	2,290
30	860,403	151,430	1,011,833	33,728	24,942	18,041
40	90,222	15,878	106,100	2,652	1,756	1,116
50	702,656	123,677	826,333	16,526	9,766	5,412
60	199,698	35,146	234,844	3,914	2,059	986
62½	39,157	6,890	46,047	737	376	173
75	403,535	71,021	474,556	6,327	2,776	1,059
	<u>\$2,583,380</u>	<u>\$454,675</u>	<u>\$3,038,055</u>	<u>\$81,397</u>	<u>\$56,205</u>	<u>\$38,768</u>

Average life determined by Straight Line method:

3,038,055

= 37.07 years average life.

81,397

Annuity required to redeem 1,000 in 37.07 years, compounded at 2% = \$18.50.

\$3,038,055 × \$18.50

= 56,205.

1,000

The total value of plant used in this Table does not exactly correspond to the amounts considered in the valuation of the property which we have adopted above, but does not depart sufficiently from these valuations to cause any serious error. This Table shows that on a straight line basis the sum of \$81,397 should be laid aside each year for depreciation. The Table also shows the amounts required if the depreciation could be laid aside on a sinking fund basis. Some study of the experience in handling of depreciation allowances shows that the sinking fund basis is not ordinarily applicable in connection with a property where renewals are being frequently made of the minor portions of the plant. On the sinking fund basis, the assumption is made that the depreciation allowance will remain intact until the end of the term. As a matter of fact, however, the depreciation reserve is called upon every year to pay for many minor renewals. The amount left in the reserve is ordinarily invested in extensions to the plant and system, and these statements being true, show that the straight line basis is the only correct method for computing depreciation reserve in connection with a plant of the character under consideration. The amount referred to above, \$81,397, is very nearly 8 cents per thousand cubic feet of gas.

Analysis of the operating expenses of the company for the years 1904 to 1911 inclusive shown in Exhibit 12 and Exhibit No. 4, September 9th, indicates that minor renewals have already been charged to operating expenses. We have not estimated the proportion of the amounts charged to repairs which might have been charged to depreciation. To do so would require a critical examination of all charges to repairs or to construction. We are of the opinion, however, that an allowance of 6 cents additional to the amounts already charged to operating expenses would be sufficient to properly maintain the property.

Some comment is also important with reference to the operating expenses. Some comparisons have been made between the operating expenses per thousand cubic feet and expenses of other companies operating under somewhat similar conditions, and we find that the general efficiency

of this company is at least as good, and is probably better, than the average of the companies with which we have made comparison. See Exhibit No. 13. Perhaps some additional allowances ought to be made because of the prospective increase in the cost of oil and other materials required in the manufacture of gas. The possibilities are not remote that certain materials will increase in cost. On the other hand, decreased rates may bring about an increase in the consumption of gas per capita or per unit of investment. If we are mistaken in these views, the matter is not irremediable, as rates can be still further adjusted at a future time if the necessity for it is shown.

We do not contend that any particular rate of return is applicable in all cases. In our judgment, the rate of return to which a public utility is reasonably entitled is a question of fact to be determined in the light of all of the evidence and on a consideration of all of the facts in each particular case.

It is clear, however, that the rate of return must suffice to attract the capital, which in the case at bar is large in amount, required year by year in making the additions and extensions to manufacturing plant and distribution system which the growth of the communities served demands.

Tables V, VI and VII have been constructed to show the relative results at different rates of return.

In our judgment based on all of the evidence and a consideration of all the facts, a rate of ninety (90) cents per thousand cubic feet will furnish a fair return at not less than 8% on the fair value of the property used and useful in supplying the customers of The Public Service Gas Company in the Passaic Division.

Entered December 26th, 1912.

#### ORDER.

This case having been duly submitted, and full investigation of the matters and things involved having been had, and the Board having on the date hereof made and filed a report containing its findings of fact and conclusions thereon,

which said report is hereby referred to and made part hereof.

The Board of Public Utility Commissioners, after hearing, upon notice, by virtue of the power and authority conferred upon it by statute, now, on this twenty-sixth day of December, nineteen hundred and twelve.

*Determines* that the existing rate or charge for gas made by the Public Service Gas Company in the territory now supplied from the Paterson Gas Plant, comprising Paterson City, Hawthorne Borough, Haledon Borough, Prospect Park Borough, Saddle River Township, Little Falls Township, Acquackanonk Township, Passaic City, Garfield Borough, Lodi Borough, Wallington Borough, Nutley Town, Ridgewood Village, Glen Rock Borough and Totowa Borough, to wit:—One dollar and ten cents per thousand cubic feet, with a discount of ten cents per thousand cubic feet for prompt payment, is unjust and unreasonable; and fixes as a just and reasonable rate or charge to those who are now, or under the present schedule of rates of said company would be required to pay the existing base rate of One Dollar and ten cents per thousand cubic feet, (less ten cents per thousand cubic feet for prompt payment,) the rate or charge of ninety cents per thousand cubic feet, which rate or charge shall on and after February first, Nineteen Hundred and Thirteen, and until otherwise ordered, be imposed, observed and followed in said territory, in all cases where the existing base rate above referred to would otherwise apply.

Entered December 26, 1912.

**OHIO.**

**Public Service Commission.**

**JAMES ROSS, *Complainant*, vs. THE COLUMBUS RAILWAY AND  
LIGHT COMPANY, AND THE OHIO ELECTRIC RAILWAY  
COMPANY, *Defendants*.**

**No. 312.**

*Decided January 30, 1913.*

**Construction of Franchise—Jurisdiction of Commission.**

*Held:* That the Commission has no jurisdiction to construe the terms of  
a franchise.\*

It appearing that the issues raised in this case by the pleadings involve and require a construction and interpretation of the terms of the franchise granted by the City of Columbus to said defendants, and it appearing that the Commission has no jurisdiction and no authority of law to determine the issues so raised, this case is, therefore, dismissed.

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\*Editor's headnote.





American Telephone and Telegraph Company  
Bureau of Commission Research  
Legal Department  
15 Dey Street, New York City

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**COMMISSION LEAFLET No. 16**

April 1, 1913.

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Recent Commission Orders, Rulings and Decisions  
from the following States:

California

Kansas

Louisiana

Maryland

Massachusetts

Michigan

Mississippi

Nebraska

New Jersey

New York

Ohio

Oklahoma

South Carolina

Wisconsin

and from  
Great Britain





## PART I.

### COMMISSION ORDERS, RULINGS AND DECISIONS DIRECTLY AFFECTING TELEPHONE AND TELE- GRAPH COMPANIES.

#### CALIFORNIA.

##### Railroad Commission.

TEHAMA COUNTY TELEPHONE COMPANY

*vs.*

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY.

Case No. 271.

GLENN COUNTY TELEPHONE COMPANY

*vs.*

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY.

Case No. 272.

Decision No. 425.\*†

*Decided January 30, 1913.*

**Physical Connection—Poor Service—as the Cause of Competi-  
tion—Inferior Service of Company Resisting Connection—  
Mechanical Feasibility of Connection—Cost of Con-  
nection—Increased Toll Revenue—Natural Monop-  
oly—Competition—Duplication of Facilities—  
Extension of Long Distance Service—  
Burden of Cost of Connection. [Ed.]**

Complainants ask for a physical connection between their telephone systems and the system of defendant. Upon the evidence, the Commission finds—

(1) That the present service of the independent companies, the plaintiffs herein, is superior to that of the defendant company with reference to speed of operation, clearness of sound and quality of service.

\*Decision No. 476, dated February 22, 1913, denying the defendant's application for a re-hearing, is printed on page 438.

†Upon March 6, 1913, The Pacific Telephone and Telegraph Company filed an appeal from the order of the Commission in the Supreme Court of California.

(2) That a physical connection can reasonably be made between the lines of the defendant company and the lines of plaintiffs, between their respective exchanges of Red Bluff and Willows and that the lines of these companies can be made to form a continuous line of communication by the construction and maintenance, between and in said respective exchanges, of suitable connections for the transfer of messages or conversations.

(3) That public convenience and necessity will be subserved by such connections.

(4) That the companies, parties to these proceedings, have failed to establish joint rates, tolls or charges for service by or over their lines and that joint rates, tolls and charges ought to be established.

(5) That the purpose for which these connections are desired is not primarily to secure the transmission of local messages or conversations between points within the same city and county, or city or town, but, rather, that the purpose is to secure the transmission of long distance or toll messages and conversations from a point in one city or town or county to a point in another city or town or county to the extent indicated in the order.

(6) That if the connection is made the result will not be, as insisted by defendant, to give the use of a portion of its system to the independent companies, nor to deprive defendant of the control of its own property and of the use of its property without due process of law.

(7) That the defendant has not adequately served the public in the territory in question, and that such failure has directly brought about and called into being the independent companies which now desire this connection.

*Held*, therefore, that no duplication will be brought about by permitting said physical connections, and, hence, no economic fallacy produced, and that the duplication that already exists is the direct result of the default, on the part of the defendant, in the adequate performance of its duty.

*Held*, no public utility, or no other monopoly, as far as that is concerned, can ever justify, nor should it be able so to do, its existence as a monopoly on the theory of an advantage to its patrons which does not exist.

*Ordered*, that physical connections, at the expense of plaintiffs, and through routes be established as prescribed; that joint rates be made and used.

*H. P. Andrews*, for complainants.

*Hunt Chipley* and *H. D. Pillsbury*, for defendants.

## REPORT.

ESHLEMAN and THELEN, *Commissioners*:

In these cases complainants ask for a physical connection between their telephone systems and the system of defendant. The complaints in these cases were filed on April 30, 1912, and are substantially in the same form in both cases. The complaint in Case No. 271 alleges in effect that complainant

is a public utility owning and operating a telephone system in Tehama County, California, and having connected with its system in actual use and service 698 stations; that defendant is a public utility corporation doing a general telephone business in California and owning long distance toll lines throughout the State, one of its exchanges being situated in Red Bluff, Tehama County; that complainant has requested the defendant to establish a long distance connection between the exchanges of the parties at Red Bluff, but the defendant has refused to comply with the request; that the telephone lines of the parties can be made to form a continuous line and that the physical connection between the exchanges of the parties can reasonably be made by the construction of a trunk line between the exchanges of the parties at Red Bluff and that public convenience and necessity will be subserved by such connection; that the portion of the expense of making the connection to be borne by defendant will not exceed \$50 and that the amount of business which will be transacted through such connection cannot be accurately estimated; that 457 of complainant's telephone stations are held by subscribers who do not have telephones belonging to defendant or connected with defendant's system, and that the persons using these 457 telephones are without long distance service; that the service of complainant's telephone system is far superior to that of defendant and that it would be a hardship upon the subscribers of complainant's system to be compelled to use defendant's telephones in order to secure long distance connection.

The complaint in Case No. 272 is practically identical with that in Case No. 271, except that complainant's property is situated in Glenn County and consists of some 889 telephones, of which 570 are held by subscribers who do not have telephones belonging to defendant.

On June 3, 1912, the defendant in each of these cases filed its answers, which answers are almost identical in form, and deny most of the material allegations of the complaints.

The two cases came on for hearing on June 14, 1912, at which time they were consolidated for hearing. At the close of the hearing, both parties requested permission to file briefs,

which permission was granted. The briefs have been filed and the cases are now ready for decision.

Tehama County Telephone Company operates telephone business within the county of Tehama, consisting both of local exchange business and of toll business within the county. Glenn County Telephone Company operates a telephone system within Glenn County and a toll business within that county. Each of these companies also does a long distance business with the other county by means of a toll wire circuit running between Red Bluff and Willows on the poles of the Postal Telegraph Company.

The Tehama County Company has two exchanges and The Pacific Telephone and Telegraph Company has three exchanges in Tehama County. The Glenn County Telephone Company has four exchanges and The Pacific Telephone and Telegraph Company operates seven exchanges in Glenn County, including some magneto exchanges at Fruto, Winslow and Elk Creek.

On April 29, 1912, the Tehama County Telephone Company had 698 subscribers, of whom 457 did not have one of defendant's telephones. On the same day the Glenn County Telephone Company had 889 subscribers, of whom 570 were not duplicated by defendant. On March 31, 1912, defendant operated some 870 telephones in Glenn County, of which something over 600 were owned by defendant and the remainder were owned by farmers and were connected with what is known as "Farmers' Lines." On the same day defendant operated in Tehama County 1,003 telephones, including a considerable number of farmers' 'phones. Of all the rural telephones in these two counties operated by defendant, 70 per cent. are owned by farmers and only 30 per cent. by defendant. In other words, defendant's exchange development has been largely confined to the towns and cities, while the telephone lines in the country operated by defendant have been constructed and are owned by the farmers themselves.

As stated by complainants, the value of the plant of the Tehama County Telephone Company is something over \$60,000 and that of the Glenn County Telephone Company something over \$73,000. On January 1, 1912, the value of defend-



ant's exchange plant in Glenn County, as stated by defendant, was \$66,000 and of its toll plant \$34,150, making a total of \$100,150. On March 23, 1912, the value of defendant's exchange plant in Glenn County had increased from \$66,000 to \$76,000. On January 1, 1912, the value of defendant's exchange plant in Tehama County, as stated by defendant, was \$75,000 and of its toll plant \$60,000, making a total of \$135,000. On March 23, 1912, the value of defendant's exchange plant in Tehama County had increased from \$75,000 to \$88,300.

The Glenn and Tehama County Telephone companies own all the plant which they operate except what is known as "Swanson's Line," extending from Red Bluff northeasterly and operating somewhat in excess of 60 telephones. Defendant owns the toll plant which it operates and the exchange plant within the cities and towns, but, as has been said, at least 70 per cent. of the exchange 'phones operated by defendant within the country district are owned by the farmers.

Glenn County Telephone Company started operations in 1908 and Tehama County Telephone Company in 1911. In 1908, at the time when the Glenn County Company commenced its operations, the defendant confined its operations principally to the cities and towns. It did not build into the outlying district and the farmers were obliged to build their own lines. At that time the service of the defendant was very much poorer than it is at present. The defendant company at that time operated what is known as the magneto or "coffee grinder" system. In order to get "Central" by this system it is necessary to ring a crank and when "Central" desires to reach a subscriber on the line, "Central" rings a crank, which rings the bell on each of the telephones on the line. This system permits of what is known as "rubbering" by each of the other subscribers on the line taking down their telephone in order to hear what is being said, and the noise of the ringing of other subscribers' telephones is undesirable. During the same period, defendant refused to go out and repair the Farmers' lines for the farmers, with the result that the farmers had to do the repairing themselves. The poor quality of the service and the failure of defendant to build

into the country districts resulted in the formation of the two independent companies.

The defendant company was the first in the field and built a toll line running north and south through Glenn and Tehama counties to the present exchanges at Willows and Red Bluff. When the independent companies started their operations they duplicated this portion of defendant's system. The independent companies then began building out into the country in both sides of these counties and developing territory which has not been developed by defendant. During the early portion of 1912 the defendant company began to build out into the country districts and to duplicate a very large portion of the lines of the independent companies. In all cases except the toll lines heretofore specified and the exchanges connected therewith in cities and towns along the line, the independent companies were in the field first. After January, 1912, in Tehama County, the defendant duplicated the line running southwest from Red Bluff to Paskenta, which was formerly an independent line and had been purchased by the Tehama County company. The defendant also duplicated Swanson's line, running northeast of Red Bluff, these two lines being the two chief lines running into the country from Red Bluff. The defendant company also duplicated various other lines which had been built by the Tehama County company.

After January, 1912, and particularly after March 23, 1912, defendant duplicated the lines of the Glenn County Telephone Company to the north, east and south of Orland, in the vicinity of Willows, particularly east to Glenn and south into what is known as the Packer Tract. The result of these duplications in these two counties has been that at the present time most of the lines of the independent companies have been duplicated by the defendant company. It is clear from the evidence that the purpose of this duplication is to drive the independent companies out of business. Another device used to this same end was to give free exchange service between towns which had not theretofore had such service, such as between Willows and Butte City and Red Bluff and Los Molinos.

After the advent of the independent companies the defendant company materially improved its service within the cities and towns. It now largely has installed what is known as the common battery system, which is a considerable improvement on the old magneto or "coffee grinder" system. The latter system, however, is still in use by defendant throughout the country districts of these two counties.

The independent companies operate throughout their entire territory what is known as the Dean or Home or Harmonic system. This is a system whereby the bells are tuned to respond only to certain currents, so that only one bell on the line rings at a time. The ring of the bell is considerably louder than that of the ordinary coffee grinder system so that people outside of the house can more readily hear it. It is also possible to secure "Central" and the party at the other end of the line more speedily by use of the Dean system, and the sound is considerably clearer than is the case with either the coffee grinder system or the common battery system.

The uncontradicted testimony in this case is, that the present system of the independent telephone companies is very much preferable to that of the defendant company. This was the testimony both of men who used only the 'phones of the independent companies and of others who used the 'phones of both the independent companies and of the defendant company. During the course of the trial, after the independent companies had introduced a number of witnesses, all of whom testified that the service of the independent companies was superior to that of defendant company, the defendant stipulated that the users in Tehama and Glenn counties of the service of the independent companies would all testify that the service of the independent companies is superior to that of the defendant company. In view of this stipulation it became unnecessary for the complainants to introduce further testimony on this point.

We find as a fact from the evidence in these cases that the present service of the independent companies is superior to that of the defendant company with reference to speed in reaching the party at the other end, the clearness of the sound and the quality of the service.

A portion of the territory in Tehama and Glenn counties is at present served by the independent companies but not by the defendant company. Among these points are Baynes Creek Post Office and Inskip, which are exclusively served by Swanson's line (Transcript, page 154); Battle Creek Bottom (Transcript, page 156), as to which the facts are the same; the Bayless district in Glenn County, exclusively served by the Glen County company (Transcript, page 135); the district south and east of Willows (Transcript, page 136); which is exclusively served by the Glenn County company; and also a number of other lines out from Proberta and Corning.

It also appears from the testimony that the independent companies have over 1,000 subscribers who do not have telephones of the defendant company and that these people would like to have long distance service. It appears further that these people are confronted with the alternative of continuing their present superior local service without the advantage of long distance service, or of being compelled to take inferior local service so that they may be able to avail themselves of the defendant company's long distance service.

On the question of public convenience and necessity, all witnesses who were asked the question testified that in their opinion, public convenience and necessity demanded the connection asked for. This was the testimony both of witnesses who used the 'phones of the independent companies exclusively and of those who used both 'phones, and from all the evidence on this point we believe that public convenience and necessity does demand the connection;

And we find as a fact that the public convenience and necessity require the making of the connections as prayed for.

While defendant argued that there were difficulties in making the connections desired and also in transmitting calls from the system of the independent companies to points on the defendant company's lines, it appears from the testimony that in a large number of cases defendant does have physical connection with other independent companies which are not subject to its control. The defendant company has held and now maintains connections for long distance business

with telephone plants located in the following cities in California: Los Gatos, Gilroy, Morgan Hill, Sanger, Reedley, Healdsburg, Roseville, Colusa County, Corcoran, Redlands, Ferndale, Corona, Whittier, Calistoga, Guerneville, Sonoma, Lakeport, Lindsay, Exeter, Lemon Cove and Weed.

In quite a number of cases the defendant company maintains physical connection with a telephone system not using the Bell telephone. At the hearing defendant admitted that a physical connection between its system and that of the independent companies, which use the Dean or Home telephone, is practicable and that there is no insuperable operating difficulty connected therewith. The defendant company at present has connections with the following exchanges in California, using at least in part instruments other than the Bell Telephone: Colusa County, Healdsburg, Lindsay, Los Gatos, Morgan Hill, Roseville, Gilroy, Sanger, Corcoran, Lemon Cove and Reedley.

In addition to these places, the defendant company, under permission asked for by that company and granted by this Commission, has installed a physical connection between its plant in the city of Pasadena and the plant in said city formerly owned by the Home Telephone Company of Pasadena, using the Home 'phone, and as the result of that connection, subscribers having the Home 'phones are conversing without apparent difficulty over long distance with points on the lines of the defendant company and *vice versa*.

In this connection we would draw attention also to the fact that Swanson's line running from Red Bluff northeast in Tehama County, which line uses the Dean 'phones, was for a time connected with the defendant company with apparently no complaint as to operating difficulties on the part of his patrons desiring to secure long distance connections with points on the lines of defendant company.

Mr. Burkett, defendant's engineer, testified that connection could be made between the lines of the Tehama County company and the defendant company in Red Bluff, and the lines of the Glenn County company and the defendant company in Willows by stringing between the offices a 25-pair No. 19 gauge cable (Transcript, page 190), and that it would be

necessary to set aside one operating position in each of these offices. He estimated the cost for the Red Bluff connections as \$500 and for the Willows connection as \$450, not counting the operating positions. He stated that the operating position in Red Bluff would cost approximately \$350 and that in Willows approximately \$500. Mr. Lindstrom, the independent companies' engineer, testified that connection could be made by the use of a pair or two pairs of 22-gauge cable wires in Red Bluff, with the necessary appurtenances and that the cost of the connection would be between \$20 and \$25. He stated also that the Tehama County company now has on hand a cable which may be used for this purpose. He testified that \$35 would cover the entire connection, with necessary labor and material. He testified that the cable itself was worth about \$500. He testified (Transcript, page 379) that the present operators of the defendant company's switchboard could handle the toll business between the two telephone companies, and that \$15 would cover the cost of extra equipment in the office of the defendant company at Red Bluff to prepare itself for the additional business. He further testified that the cost of connection would be about \$35 at Willows, and that the defendant company has just installed a new switchboard there.

There was considerable testimony, both direct and by analogy, bearing on the amount and revenue of increased toll business coming to the defendant company in case the connection should be ordered.

Defendant with its 870 subscribers in Glenn County received from intercounty toll business in that county for the first three months of 1912, \$2,395.52.

For the same period the company received from its intercounty toll business in Tehama County, \$2,158.15.

By applying these returns to the 1,000 'phones now served exclusively by the independent companies, a fairly accurate estimate could be secured as to the amount of business which may reasonably be expected from those 1,000 'phones if connected with the defendant company.

At Healdsburg, which is served by the California Telephone and Light Company, which has long distance con-

nections with the defendant company, the average toll receipt per station per month is 46.8 cents. In the Sacramento Valley district the average per year for each station owned by the defendant company in 1911 was \$10.12 or 84.3 cents per month. During the same period the average for all stations in the Sacramento Valley, including connecting and sub-licensed stations, was \$8.42 per year or 70.1 cents per station per month. The toll business originating from the Colusa County company from May, 1911, to April, 1912, was \$4,112.34 for 759 telephones, being an average of \$5.40 per 'phone per year or 45 cents per 'phone per month.

Mr. Prescott H. Coolidge, a witness called on behalf of defendant, testified that the effect of the proposed connection on defendant's local exchange business would be to "perpetuate an economic fallacy" by causing the useless duplication of plants. He stated that defendant would doubtlessly receive an increased toll revenue, but that this result would be produced at the expense of its exchange business. Mr. Lindstrom, the independent companies' engineer, testified (Transcript, page 306) that in his judgment the question would resolve itself into the survival of the fittest and that the superior service would win out in the end. He would not commit himself as to the effect of such connection on the number of local telephones of the defendant company further than to say that the company which gave the best local service would secure the business.

Defendant has insisted that to make the connection would be to give the use of a portion of its system to the independent companies and to that extent would deprive the defendant of the control of its own property and of the use of its property without due process of law. We find that this point is not well taken. If the connection were made, the defendant's property would remain under the exclusive control of the defendant and its operators. The operators of the independent companies would have no control over the defendant company's property. The defendant company would be interfered with in its operation only to the same extent as would be true in case of the receipt of so much new business from any other source. The result would be analogous to

that if the defendant company bought some independent company and then received so much new business from that company.

The only important contention of the defendant herein is as set out in the testimony of Mr. Coolidge, a witness called in the defendant's behalf, that to grant the relief prayed for by complainants would perpetuate an economic fallacy because it would lead to duplication of facilities in the case of a natural monopoly. While we agree that as a general proposition the interest both of the public and of the consumers of a public utility, which is a natural monopoly, may be better served by one agency than by two, yet there are very important reservations which must be made from this statement. The only warrant for the existence of a monopoly of any sort must be found in the advantage to the consumers and patrons of such monopoly. The reason why it is ordinarily believed that competition between natural monopolies is advantageous for the patrons of such monopolies is the fact that following such competition there is usually a reduction of rates and an improvement of service. Whenever humanity finds that one experience is invariably followed chronologically by another, humanity is inclined to believe that the second experience is the result of the first. That such is not the fact may often be demonstrated. The lower rates and more adequate service which follow competition between natural monopolies are rates and service which demonstrably could have been afforded by the monopoly without competition, unless the lower rates and improved service which follow such competition are of a character which the agency according them cannot afford to give. In short, when we find that a power company, for instance, lowers a rate when a competitor comes into a field, or improves its service, we can readily see that such power company could have lowered its rate before the competitor appeared, and it likewise appears that it could have legitimately made it even lower before the competitor appeared than it now voluntarily accords under competition. Before the competitor appeared it did not have to divide its consumers with any one. A reduction of rates of a natural monopoly and improvement of



service under competition is an indication of one of two things, either that the rates were too high and the service not good enough before the competition arose, or that the rates are made too low and the service too good for the price under the stress of the competition. The former result could and should have been brought about without competition; the second result cannot be permanently maintained even under competition unless the utility according too low a rate is charging too high a rate elsewhere. The common practice, of course, is to make the rate too low and drive out the competitor and after the competitor is eliminated or a combination effected, to raise the rate and recoup for losses attendant upon the rate war. We consider it bordering very much on effrontery for a public utility to urge that it is an economic fallacy to duplicate facilities, unless such utility has accorded to the public the advantage to which the elimination of duplication is supposed to entitle it. In this case it was testified by Mr. Coolidge, witness for the defendant, that when the company which he represents absorbed its opposing companies in Oakland and San Francisco, and thereby eliminated at least in part the economic fallacy, it actually reduced the number of employees used to serve the public of these cities while the competition existed. It is hard to persuade the public that an economic fallacy such as here under consideration is not as to it, the public, a good thing, when as a matter of fact when the economic fallacy was inflicted upon them their condition was better than either before or after the existence of such economic fallacy. No public utility, or no other monopoly as far as that is concerned, can ever justify, nor should it be able so to do, its existence as a monopoly on the theory of an advantage to its patrons which it does not accord.

In the case before us, however, we do not admit that granting the relief which the complainants ask will produce an economic fallacy even under the defendant's theory. The major portion of the duplication which exists, and particularly that in the rural districts, was brought about by the failure of the defendant company adequately to serve the public. The duplication now exists, and the granting of the application,

instead of bringing about duplication, will minimize the effect of it. In granting this application we desire to reassert the policy which was laid down in the case of *Pacific Gas and Electric vs. Great Western Power Company*,\* decided by this Commission on June 16, 1912, to the effect that where a utility adequately serves the public at reasonable rates and the territory is completely served, this Commission's inclination will be to permit such utility, if it be a natural monopoly such as a telephone or lighting company, to hold its field free from competition, but that failure so to do will result in this Commission's permitting competition when a competitor applies. We find that the defendant herein has not adequately served the public in the territory in question, and that such failure on the part of the defendant has directly brought about and called into being the independent companies which now desire this connection. And we desire to warn the defendant that in order to maintain and justify a monopoly in any portion of the State it must accord as good, if not better, service when competition is not imminent as it can afford to furnish under competition. The reduction in the number of employees when competition is eliminated is the very opposite from what this company should do, and we believe that such a proceeding is absolutely unwarranted. We, therefore, are of the opinion that no duplication will be brought about by reason of this order, and hence no economic fallacy produced, and we are further of the opinion that the duplication that already exists is the direct result of the default on the part of defendant in the adequate performance of its duty.

We submit the following form of order :

#### ORDER.

Tehama County Telephone Company and Glenn County Telephone Company having filed with this Commission their respective complaints against The Pacific Telephone and Telegraph Company requesting an order of this Commission

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\*Printed in Commission Leaflet No. 8, at page 63.

for a physical connection between the lines of complainant and defendant companies, and for the establishment of through routes and joint rates, tolls, and charges as specified in said complaints, and said proceedings having been consolidated for hearing and public hearing having been duly held thereon, and evidence having been introduced by all parties to said proceedings, and the Railroad Commission being fully advised in the premises, we hereby, in reliance on the evidence in this case, make the following findings of fact:

1. We find as a fact that a physical connection can reasonably be made between the lines of the defendant company and the lines of the complainant independent telephone companies, between their respective exchanges in Red Bluff and Willows, and that the lines of these companies can be made to form a continuous line of communication by the construction and maintenance between and in said respective exchanges of suitable connections for the transfer of messages or conversations.

2. We find as a fact that public convenience and necessity will be subserved by such connections.

3. We find as a fact that the companies parties to these proceedings, have failed to establish joint rates, tolls or charges for service by or over their lines and that joint rates, tolls, and charges ought to be established to the extent hereinafter indicated.

4. We find as a fact that the purpose for which these connections are desired and herein ordered, is not primarily to secure the transmission of local messages or conversations between points within the same city and county, or city or town, but rather that the purpose is to secure the transmission of long distance or toll messages and conversations from a point in one city or town or county to a point in another city or town or county to the extent hereinafter indicated.

Basing our order upon the foregoing findings and the further findings contained in the opinion which precedes this order,

*It is hereby ordered as follows:*

1. That a physical connection be established between the telephone exchanges of the Tehama County Telephone Com-

pany and The Pacific Telephone and Telegraph Company in the city of Red Bluff, California.

2. That a physical connection be established between the telephone exchanges of the Glenn County Telephone Company and The Pacific Telephone and Telegraph Company in the city of Willows, California.

3. That through routes be established over said connections for the purpose of conveying long distance or toll messages and conversations to and from the lines of complainants in Tehama and Glenn counties, in California, from and to the lines of defendant in other counties in the State of California, not to cover the transmission of messages between points within Tehama County or points within Glenn County, or between points in Glenn and Tehama counties, and that this order shall apply only to California State business.

4. That joint rates, tolls and charges be made and used, observed and in force in the future over said through routes, these rates, tolls, and charges to be the same as the rates, tolls and charges now or hereafter to be established between the points affected, respectively, in Tehama or Glenn counties and other points, as affected, in the State of California, on the lines of the defendant company. If the companies cannot agree upon a division between them of the joint rates, tolls or charges herein established, they shall so notify the Commission within twenty days of the date of this order, whereupon the Commission will proceed to establish such divisions by supplemental order.

5. That the cost of installing the physical connections shall be borne entirely by the complainant companies.

6. That the companies are directed to agree, if possible, upon the rules and regulations to govern the use of said physical connections and the transmission and transfer of messages and conversations over the same. If the companies cannot agree upon such rules and regulations, they shall notify the Commission within twenty days of the date of this order, whereupon the Commission will establish such rules and regulations by supplemental order.

7. This order shall be complied with within thirty (30) days from its date.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this thirtieth day of January, 1913.

TEHAMA COUNTY TELEPHONE COMPANY

*vs.*

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY.

Case No. 271.

GLENN COUNTY TELEPHONE COMPANY

*vs.*

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY.

Case No. 272.

Decision No. 476.

*Decided February 22, 1913.*

### ORDER.

Defendant in the cases entitled as above having filed with this Commission its application for a rehearing in said cases and due consideration being given thereto, and no good cause for a rehearing appearing,

*It is hereby ordered,* That said application be and the same is hereby denied.

Dated at San Francisco, California, this 22nd day of February, 1913.

**LOUISIANA.**

**Railroad Commission.**

**CITIZENS OF WELSH vs. LOUISIANA WESTERN RAILROAD  
COMPANY.**

**Order No. 1513.**

*Decided February 20, 1913.*

**Installation of Telephones in Railroad Stations.**

**ORDER.**

Having under consideration the record in this case, and it being well known to the Commission that the location of the depot of the Louisiana Western Railroad Company at Welsh, La., is such that it is a great inconvenience and a hardship on the traveling public to have to go or send to the said depot to ascertain whether or not trains are late, or to get other necessary information, and the Commission regarding it as the duty of a railroad company to provide ample, adequate and necessary facilities at their depot for the convenience of the public, it is.

*Ordered,* That the said Louisiana Western Railroad Company shall, without delay, cause to be installed in its passenger and freight depots at Welsh, La., telephones, connected with the local exchange, and shall require its agents to answer calls and give information to interested parties.

## MICHIGAN.

### Railroad Commission.

#### IN THE MATTER OF THE APPLICATION OF THE ADDISON MUTUAL TELEPHONE COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

D-554.

*Decided February 11, 1913.*

#### Public Convenience and Necessity—Duplication of Facilities— Statutory Provisions with Respect to Incorporation of Telephone Companies and Acquisition of Franchise Rights—Priority of Claim.

Upon application by the Addison Mutual Telephone Company for a certificate of public convenience and necessity authorizing the construction of a telephone exchange in the village of Addison, it appeared that a switchboard that was being used to afford switching service for the benefit of those who built their own lines to connect with it, had been recently purchased by Mr. N. F. Wing, who announced his intention to install and operate an up-to-date telephone system at a rate in keeping with the service rendered. Despite the pronounced opposition of the majority of the telephone users and without obtaining any franchise, Mr. Wing proceeded to install new pole lines and erect a new exchange, disconnecting the lines of all former users who refused to pay the rates demanded. Thereupon the Addison Mutual Telephone Company was incorporated by citizens of the village for the purpose of purchasing the facilities owned by former patrons and continuing the service formerly rendered.

*Held:* That Mr. Wing did not acquire from his grantors or through anything which has transpired since the purchase, any rights of a vested character;

That it will unquestionably be to the advantage of all concerned if the telephone facilities of the community are furnished and maintained by one organization rather than by two:

That the stockholders of the Addison Mutual Telephone Company with respect to both investment and priority of claim, have an equal, if not a greater right to the protection of their interests than Mr. Wing, and can maintain as well as he the claim that their system when constructed will answer the demands of public convenience and necessity:

That an unquestioned need for telephone facilities exists in Addison and that a certificate of public convenience and necessity should issue to the Addison Mutual Telephone Company.

A certificate of public convenience and necessity was accordingly issued to the applicant.\*

\*Editor's headnote.

## APPEARANCES:

*John F. Steward*, for Addison Mutual Telephone Company.

*James J. Noon*, for Nelman F. Wing.

## OPINION.

*HEMANS, Commissioner:*

Prior to March 4, 1912, the residents of the village of Addison, in the County of Lenawee, had received telephone service through what might be termed a co-operative arrangement. Under this arrangement each subscriber or patron receiving service at the exchange, purchased a telephone and with more or less uniformity set poles where necessary, and strung the wires from such telephone to a switchboard centrally located, but individually owned. The farmers in adjacent territory likewise joined in the construction of rural lines, which they extended to this central board at their own expense. The owner of the switchboard performed the necessary switching service for the owners of the various telephones, receiving a stipulated yearly compensation therefore. About 200 telephones were connected with this central exchange. The switchboard had been the object of frequent sale and the facilities afforded in the form of pole lines, wires, etc., had become much depreciated and the service of consequently poor character, when on the date mentioned the switchboard and such property as went with it, and not owned by the individual patrons was purchased by Mr. Nelman F. Wing, Secretary of the Home Telephone Company of Grass Lake. At once following the purchase, Mr. Wing gave notice to the telephone users in Addison and the adjacent territory that it was his purpose to erect a new pole line upon the streets of the village, install new apparatus and put in operation an efficient, up-to-date telephone system, and to charge a rate in keeping with the service to be rendered. This action at once aroused the pronounced opposition of the large majority of telephone users of the village, and upon the rural lines. At once an application, bearing the signatures of most of the business men of



the village, was filed with this Commission, asking the privilege of installing a new switchboard and continuing the condition that had previously obtained under the mistaken thought that it was a matter of which the Commission could take cognizance.

Without obtaining, or attempting to obtain, a franchise or other right upon the streets of the village, Mr. Wing proceeded to take down the poles in the streets of the village that had been set by the telephone users, to set his own poles and string wire. While engaged in this work a fire occurred in the building in which the switchboard was located, destroying the switchboard and exchange facilities. These were promptly replaced by Mr. Wing, and the lines of all former telephone users that did not accept the service and facilities offered at the prices demanded by Mr. Wing were severed from the new exchange that was installed.

On the 29th day of June, 1912, a number of citizens of Addison who had formerly been connected with the switchboard maintained in the village, perfected articles of incorporation for the Addison Mutual Telephone Company with a capital of \$3,000 of capital stock, which was divided into 300 shares of the par value of \$10.00 each; it being the purpose of the incorporators that the former patrons of the central switchboard should become stockholders in the new corporation, and that the corporate funds should be used for the purchase of their various telephones and other telephone facilities, and that under the corporation the service should be continued as far as possible as formerly enjoyed.

Upon the perfection of the incorporation, application was made to this Commission for a Certificate of Public Convenience and Necessity for the construction of a telephone exchange in the village of Addison. Upon this application a public hearing was had, and the foregoing facts developed.

Chapter 177 of the Compiled Laws of 1897, which was enacted in 1883, provides for the incorporation of telephone companies, and by Section 6691 grants to every company organized under the provisions of the act power to "construct and maintain lines of wire or other material for use

in the transmission of telephonic messages along, over and across or under any public places, streets and highways, etc.”

Section 28 of Art. VIII of the Constitution of 1908 provides:

“No person, partnership, association or corporation operating a public utility shall have the right to the use of the highways, streets, alleys or other public places in any city, village or township, for wires, poles, pipes, tracks or conduits, without the consent of the duly constituted authorities of such city, village or township, nor to transact a local business therein without first obtaining a franchise therefor from such city, village or township. The right of all cities, villages and townships to the reasonable control of their streets, alleys and public places is hereby reserved to such cities, villages and townships.”

Mr. Wing does not claim that he is in possession of the streets of the village of Addison under or by virtue of his compliance with the terms of either of these provisions of law. He has no vested rights such as might have been acquired by the incorporation of a company, and construction prior to 1908, and neither he or any grantor has sought or obtained a franchise for such a construction as required by the provisions of the Constitution since that time. It is true that he has at considerable expense set poles and strung wires upon the streets of Addison, in replacement of property in which a large number of the citizens of the village had a joint interest with him and his grantors, but this action was by sufferance rather than in pursuance to any authorization that insured an affirmative right.

“It is well settled that no estoppel will arise against a municipality through an action of its officials.” *City of Detroit vs. Detroit United Railway*, N. W. R. 137-652. D. L. N. No. 30, Vol. 19, page 869.

It thus cannot be said that Mr. Wing acquired from his grantors in the purchase of the switchboard and exchange facilities at Addison, or through anything that has transpired since the purchase any rights of a vested character—

neither can it be said that upon the ground of equity, if such basis may be considered by the Commission, the rights and property acquired by Mr. Wing are such as entitle him or his property to special protection over that which should be accorded the interests which the two hundred or more telephone users of the community have by virtue of the telephone property they have acquired, and which has heretofore been used in the co-operative venture. There is unquestionably no need for the duplication of telephone facilities in the village of Addison. It will unquestionably be to the advantage of all concerned if the telephone facilities of the community are furnished and maintained through one organization, rather through two. The Addison Mutual Telephone Company is regularly incorporated under the laws of this State. Under the statute providing for its incorporation, if it be granted the franchise provided for in the Constitution of the State, it is the only organization entitled to erect its poles and install its equipment upon the streets of Addison. The people who compose the stockholders of the corporation, both in property invested and priority of claim, have as much if not greater claim to the protection of their interests as has Mr. Wing, and can as well maintain the claim that their system when constructed will answer the demands of the public convenience and necessity as he.

There is unquestioned need for telephone facilities in Addison, and under the facts stated we believe a Certificate of Public Convenience and Necessity should issue to the Addison Mutual Telephone Company for the construction of a Telephone plant within the corporate limits of the said village of Addison.

Dated February 11, 1913.

#### CERTIFICATE.

Application was filed in the above entitled matter on the 29th day of July, 1912, upon which public hearing was had on the 17th day of September thereafter, and from said application and proofs produced in support thereof it appears that the Addison Mutual Telephone Company is a corporation

organized under and by virtue of the laws of this State, located in the village of Addison, County of Lenawee and State of Michigan:—

That it is the desire of said corporation to construct and operate a telephone system with poles, wires and other facilities upon the streets, highways and public places of the said village of Addison, County of Lenawee, State of Michigan.

And this Commission having duly investigated the merits of such application, and being convinced that the construction of such telephone system within the territory described will be in furtherance of the public interest—

*Therefore,* By virtue of the authority vested in us by law, We Do Hereby Certify, that the construction of such telephone system, and erection of poles, wire and other facilities within the territory described is a work of public convenience and necessity within the meaning of Section 7 of Act 138 of the Public Acts of 1911.

GRENVILLE L. SMITH ET AL,

*Complainants,**vs.*

THE CASS COUNTY HOME TELEPHONE COMPANY,

*Defendant.*

T-26.

*Decided March 6, 1913.*

**Reasonableness of Rates—Valuation of Property—Reproduction  
Cost—Present Value—Depreciation—Free Toll Service—  
Discrimination Owing to Unfilled Party Lines—  
Discrimination in Rates between Localities—  
Lower Rates Justified in Smaller Communities.**

Complaint (1) that the requirement that patrons execute a certain contract as a pre-requisite to service is an unreasonable and unlawful regulation, and (2) that the rates demanded by the defendant for service at Cassopolis are excessive.

The question of contract (1) was disposed of in the case of *Jones v The Cass County Home Telephone Company*.\*

For the purpose of determining the reasonableness of the rate (2), which had recently been increased, the Commission made a valuation of the company's property, finding the reproduction cost, not including the cost of financing, contractors' profit or going value, to be \$128,134.76 and the present value, \$101,767.45, as compared with an outstanding capitalization of \$203,275.00.

Despite its very conservative estimate as to the annual cost of service, the Commission found that the total cost nevertheless exceeded the revenue estimated at the rates charged before the increase, and that a considerably greater sum would be no more than sufficient to maintain the system in a state of high efficiency.

The Commission held that the practice of providing free service between exchanges was illogical and indefensible, and that free tolls and relatively low rentals were incompatible, but inasmuch as both the company and its patrons opposed the elimination of the free service, the Commission made no order in this respect.

Finding that the company was rendering a large amount of individual service at its four-party rate owing to the fact that the party lines were not filled, the Commission held that this practice constituted a discrimination which must cease.

With respect to the complainants' contention that the application of one rental rate throughout the company's territory constituted a discrimination and that the rates charged in Dowagiac should be higher than those charged in the smaller exchanges, the Commission held that, but for the

\*The opinion in this case was printed in Commission Leaflet No. 9, at page 14, and the order in Commission Leaflet No. 7, at page 19.

free service given throughout the territory, this contention would be sound. With every subscriber in the whole system given the possibility of free service with every other subscriber, it becomes more difficult to draw the line between the various exchanges. Even with free service, however, there is justification for a limited differential in the rental, inasmuch as the free service is the exceptional service, the principal service being between the subscribers of each exchange.

A schedule of rates substantially in accordance with the increased rates demanded by the defendant company was fixed by the Commission, to remain in effect for one year.\*

**Appearances:**

*Clarence M. Lyle*, Attorney, for Complainants;  
*Charles E. Sweet*, Attorney,  
*A. C. Mills*, Attorney, for Defendant.

**OPINION.**

**HEMANS, Commissioner:**

The complaint filed in this matter, by its allegations seeks to raise two principal issues, first, that a certain contract proposed by the defendant company as a pre-requisite to service to its patrons is unreasonable and unlawful in terms, and the demand by the defendant of its patrons that they execute such contract as one of the conditions of obtaining telephone service is an unlawful and unreasonable regulation, and second, that the rates and rentals demanded for telephone service through the defendant's Cassopolis exchange are excessive and therefore unreasonable and unlawful.

The question of contract was disposed of, so far as this Commission is concerned, in the case of *Jones vs. The Cass County Home Telephone Company*,† and will not be considered in this matter. As the second question was one involving an appraisal of the defendant company's lines, facilities and other physical properties as well as an audit of its books of account, this Commission of its own motion, but with the acquiescence of both parties to the controversy caused such an appraisal and audit to be made, and the conclusions and report upon the same to be added to the record.

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\*Editor's headnote.

†The opinion in this case was printed in Commission Leaflet No. 9, at page 14, and the order in Commission Leaflet No. 7, at page 19.

The defendant, The Cass County Home Telephone Company, is an Ohio corporation doing a telephone business exclusively in the State of Michigan. The company was organized in 1907, and up until the beginning of 1912 has been actively engaged in the creation of its property. At the present time it has exchanges at Dowagiac, Cassopolis, Marcellus, Decatur and Volinia, its pole lines approximate three hundred miles in length, and carry one thousand seven hundred miles of open wire, serving the population of about three hundred and twenty square miles. In this territory the company has about eighteen hundred telephones, and there are likewise about five hundred telephones of the Michigan State Telephone Company and about two hundred of the Kibbis Telephone Company. The former being mostly in Dowagiac and the latter in Decatur. Based upon the census of 1910, this is about one telephone for each seven of the population, a relatively high development. The company gives automatic service within the city of Dowagiac, and magneto service throughout the remainder of the territory. From the beginning, free exchange has been given throughout the entire system. Prior to July, 1912, the yearly rentals charged at Cassopolis, and throughout the system except perhaps at Decatur, were as follows:

Residence, private line.....	\$18.00	If paid quarterly in advance	\$15.00
Residence, party line.....	15.00	If paid quarterly in advance	12.00
Rural, party metallic.....	18.00	If paid quarterly in advance	15.00
Rural, party grounded.....	15.00	If paid quarterly in advance	12.00
Business, private line.....	21.00	If paid quarterly in advance	18.00

For some time prior to this date, the company had demanded a prescribed contract only from its new subscribers, and had exercised considerable tolerance in its demands for strict observance of advance payment to entitle patrons to the discount from the higher rates. On July 13th, following a period of considerable public irritation incident to the company's demand for a specific contract for service, the company made public a new schedule of rates, advancing its yearly rentals as compared with the prior schedule as follows:

Residence, private line.....	\$21.00	If paid quarterly in advance	\$18.00
Residence, 4 party line.....	18.00	If paid quarterly in advance	15.00
Rural, 10 party metallic.....	19.00	If paid quarterly in advance	16.00

Rural, 10 party grounded.....	17.00	If paid quarterly in advance	14.00
Business, private line.....	27.00	If paid quarterly in advance	24.00
Business, 2 party line.....	21.00	If paid quarterly in advance	18.00
Rural Roadway .....	8.00	If paid quarterly in advance	5.00
Desk telephones in residences, including farms, \$3.00 per year additional.			
Extension telephones in same building, \$6.00 per year additional.			
Extension bells in same building, \$3.00 per year additional.			

It is this increase of rate that is made the basis of the major complaint. It is the contention of the defendant company that the increase is justified by the extent and quality of the service rendered, and the needs of the company to satisfy cost of operation, reasonable return upon the investment, and especially to provide for the accruing depreciation of the property.

When we consider the restricted area covered by the company's lines and its comparatively small investment, it would have seemed that a knowledge of all the facts necessary for the ascertainment of the reasonable needs of the company for the discharge of all lawful obligations could have been readily ascertained and presented in acceptable form to the patrons of the system; but the evidence discloses that in some measure at least the spirit of calm deliberation has been supplanted by feelings of personal bitterness. These feelings have no doubt resulted in considerable degree from the conviction that the increase in rentals was being demanded to pay interest upon bonds and dividends upon capital stock, the par value of which was far in excess of the actual money expended, or that should have been expended in the creation of the property. Indeed, the financing of the company might well have given rise to such suspicion. The Company has an authorized capitalization of \$250,120.00 of common stock with a par value of \$65.00 per share; its authorized bond issue is \$150,075.00 of the denomination of \$115.00, each bearing interest at the rate of five per cent. There is now outstanding capital stock to the amount of the par value of \$163,800.00 and corporate bonds to the amount of the par value of \$99,475.00, making a total of stock and bonds issued and outstanding of \$203,275.00. The records of the Company disclose that the first securities were sold on the basis of a share of stock and a bond, the two having a par value of \$190.00, for \$100.00. Four shares of



stock of the par value of \$260.00 and a bond of the par value of \$115.00 were afterwards sold for \$200.00, while still later sales of the stock were made at prices ranging from thirty dollars per share to par. From October 1, 1908, to and including October 31, 1911, dividends aggregating \$18,279.77 were paid, while bond interest to the amount of about \$25,000.00 has likewise been cared for. The patrons of the Company, with none too accurate information as to whether dividends and interest were paid from surplus earnings or from what should have been accumulated to care for accruing depreciation, may reasonably have assumed that they were fairly applicable to the purposes to which they were applied, and that a greater demand was little short of extortion. A very different phase is put to the situation when it is ascertained that the dividends were not earned, or, at least, that no fund has been created to care for depreciation. The Company's reports show that there was realized from the sale of stock and bonds \$131,801.35, and in addition certain equipment was purchased with collateral trust notes to the amount of \$23,700.00. The Company has likewise outstanding short term notes to the amount of \$8,680.00 given for other material, making a total of \$164,181.35. The audit was carried far enough to give assurance that at least \$126,776.00 was received from the sale of stock and bonds with which the short term notes and the collateral trust obligations would show a total of at least \$159,156.00 received from the sources indicated. The foregoing is material only as giving a general view of the development of the property. The Commission does not base its findings upon the capitalization of the Company nor upon the amount of capital actually expended in the creation of the property. The inventory and appraisal of the property of the Company made by the direction of the Commission, we are satisfied, was thoroughly and carefully made. This appraisement discloses a plant cost for physical properties of \$128,134.76. This is the reproduction value and does not include cost of financing such an enterprise or such elements as contractors' profit or going value. The present value of the property must be largely based upon estimates, for while the depreciation in this property is very real, it has not yet reached a point where

it is markedly apparent. The present value of necessity must be based upon the known life of similar contruction with such aid as visual inspection contributes. The present value so computed, has been fixed at \$101,767.45. As between the various exchanges, the reproduction and present value is distributed as follows:

EXCHANGE	REPRODUCTION VALUE	PRESENT VALUE
Dowagiac	\$66,778.66	\$54,929.73
Cassopolis	26,284.22	19,968.77
Marcellus	19,591.95	14,591.58
Decatur	9,551.09	7,884.10
Volinia	5,928.84	4,393.37

Computing the earnings of the company for the year 1912 on the basis of the net tolls received, and the number of telephones of each class in each exchange at the old rate, and also on the new rate, we get the following income statement:

RENTALS	OLD RATE	NEW RATE
Dowagiac	\$10,499.00	\$11,688.00
Cassopolis	6,654.00	7,875.00
Marcellus	5,190.00	5,778.00
Decatur	2,025.00	2,423.00
Volinia	1,437.00	1,545.00
	<hr/>	<hr/>
	\$25,755.00	\$29,309.00
Net Tolls	2,746.41	2,746.41
Miscellaneous revenue	261.00	261.00
	<hr/>	<hr/>
Total revenue	\$28,762.41	\$32,316.41

It should be added that the total rentals as computed by this method are \$370.00 in excess of the rentals actually received as shown by the company's income statement. If all subscribers were retained the new rates would yield \$3,554.00 more than the computed revenue under the old rates, and \$3,923.38 more than rental revenue actually received according to the company's income statement.

A complete check of the expenses of the company for the year has been made, and the accounts recast to bring each

charge under its proper head. The total expense of operation is shown to be \$18,797.59 to which should be added taxes to the amount of \$1,564.24, making a total expense of operation of \$20,361.83.

If we apportion the taxes among the various exchanges on the basis of their present value which would seem to be a just apportionment, the expenses and taxes apportioned to the various exchanges would be as follows:

Dowagiac .....	\$8,070.45
Cassopolis .....	6,128.16
Marcellus .....	3,602.97
Decatur .....	1,512.89
Volinia .....	1,047.36

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\$20,361.83.

No evidence has been introduced even intimating how the cost of operation is to be materially reduced; the bond interest is a permanent charge, as is the interest charge on notes payable while depreciation will continue unabating in its demands. Accepting the expense of operation as continuing at the present figure, computing the bond interest at five per cent., and the interest on the notes payable at six per cent., which is undoubtedly at least one per cent. below the true figure, with depreciation at five per cent. on the present value, which is one and one-half per cent. below the most conservative estimates, and on a basis of twenty-five thousand dollars less than reproduction cost, we still have a total in excess of the revenue to be derived from the rates which have heretofore prevailed.

Expense of operation.....	\$20,361.83
5% on \$99,475.00 par value outstanding bonds .....	4,973.75
6% on \$22,661.00 of notes payable.....	1,359.66
5% for depreciation on \$101,767.45 of present value .....	5,088.37

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Total .....\$31,783.61

This is a sum greater by more than \$3,000.00 than the computed revenue of the company under the old schedule

of rates, and it must be apparent that a sum considerably in excess of this would be no more than sufficient to maintain the system in a high state of efficiency and for the rendering of good service.

Under the conditions that exist in the combined exchanges of this system it is impossible to adjust this burden with exact justice. We are of the opinion that the burden of increase over old rates should be borne both through a readjustment of telephone rentals and toll charges between the various exchanges. The present free service that exists between the various exchanges is illogical and indefensible. Shortly before the hearing a two-days' count disclosed that there was an average of about nine hundred messages daily passing between the various exchanges, free of toll. This free service represents an investment for circuits alone of \$3,600.00, while the daily care of the nine hundred messages is an item of considerable moment in operating cost. The most of the tolls earned by the company are in the form of commissions upon messages that pass outside of the system, thus demonstrating that the free service is a much abused concession, the non-renter, as well as the patron who pays his rent, availing himself of the service afforded without return to the company that furnishes it. The elimination of free service between exchanges would undoubtedly greatly reduce the messages handled. Experience in other systems showing that the number handled under the usual toll charge is about ten per cent. of the number handled when the service is free. If the defendant company received the customary minimum toll of ten cents for the first three-minute conversation on ten per cent. of the messages it now hauls free, it would make a return of \$3,285.00 to the company. This is almost, if not quite as much, as the company could hope to realize from an increase of its rentals. Free tolls and relatively low rentals in the same company are not possible. The company should eliminate the free service, but with both company and patron opposing such elimination, we are not disposed to order it, at least until the company has had an opportunity to work out some of its difficulties on a wholly rental basis.

We believe that it is possible for the company to effect some economies in operation, at least at Cassopolis, by billing from the central office, dispensing with a commercial manager at the exchange now burdened with the duty of sending statements and making collections, and employing a manager with the ability to also clear trouble. This is offered as a suggestion only. The system has been found effective with other companies and we believe it would result in a material reduction of operating expense here without detriment to the service.

There are now certain discriminations practiced by the company that result in loss of revenue to it. The company very properly makes a four-party rate that is less than the rate for individual line service, but the company, in the application of the rate, has given a large amount of individual service. Subscribers have been taken on with the understanding that at any time others could be placed upon the line, an event which in most instances does not happen, and the favored subscriber continues to receive individual line service for the four-party line rate. In the village of Cassopolis alone, on the 31st day of December, last, out of 207 paying party line rates only 76 were receiving party line service, while 131 were receiving individual service. This is a discrimination that must be removed as soon as possible.

It is the contention of the complainant that there is likewise a discrimination in the application of one rental rate throughout the whole system, that Dowagiac being much the larger exchange, should pay a proportionately higher rental than the small exchanges of the system. But for the free service throughout the system this contention would be sound. With every subscriber given the possibility of free service with every other subscriber in the whole system, it becomes more difficult to draw the line between the various exchanges, and yet we are convinced that even with free service there is justification for a limited differential in the rental rate, for the service which is accorded free is the exceptional service. The principal service is between subscribers of each individual exchange. It is impossible to grade with precision between individual users or individual exchanges, but we are persuaded that there are conditions

which justly warrant a slightly reduced rental as between Dowagiac and the remainder of the system. Dowagiac has a population of more than twice the combined urban population of the other exchanges; its exchange facilities and service are of a higher quality, and the company investment on the basis of the present value as found for the purposes of this investigation is as \$54,929.73 for Dowagiac to \$19,591.95 for Cassopolis, and \$46,837.82 for all outside of Dowagiac, including Cassopolis. This condition, we believe justifies some difference in the rental imposed.

Pending the elimination of discriminations indicated, and the institution of such economies as shall be found possible, we believe the following net rates should be collected from all subscribers, outside of the city subscribers of the Dowagiac exchange:

Residence, Individual line.....	18.00
Residence, Party line.....	15.00
Rural, metallic, not to exceed ten-party.....	15.00
Rural, grounded, not to exceed ten-party....	14.00
Business, Individual line.....	22.00
Business, Two-party .....	18.00
Rural Roadway .....	5.00

The rate for desk telephones, extension telephones and extension bells to remain as in the company's schedule. These rates are to be the net rates collected quarterly in advance. If rentals are not paid in advance, a ten per cent. penalty may be added to these rates, although with rentals payable in advance we believe it will be found more to the advantage of both company and patron to discontinue service upon failure of the subscriber to pay than to carry him with the expectation of collecting the increased charge.

We have no expectation that the rates quoted above will solve the difficulties of the defendant company, but many of its difficulties are of its own creation, and we believe that before it seeks the order of this Commission finally determining its rates on a basis that will insure its permanent prosperity and consequent ability to efficiently serve its purpose, that it should come with all discriminations removed, with every economy possible effected, and with its capitalization

adjusted in such manner that it will be able to demonstrate that it asks return only upon capital actually invested in the creation of the property. We are of the opinion that the rates and charges herein indicated should be put in operation and continued in operation for a period of one year, at the expiration of which time the Commission will entertain an application for rate re-adjustment on the basis that the suggestions of the Commission have been effected.

An order requiring the defendant company to make effective the schedule of rates herein specified will be entered.

Dated March 6th, A. D. 1913.

### ORDER.

Complaint was filed in this matter upon which issue was joined and proofs taken in the regular manner, and after reading said pleadings and listening to the proofs and arguments in said matter, it is the order of the Commission that the following schedule of rates for telephone rentals should be forthwith made effective by said defendant company within its territory outside the city limits of the city of Dowagiac.

Residence, Individual line.....	\$18.00
Residence, Party line.....	15.00
Rural, metallic, not to exceed ten-party....	15.00
Rural, grounded, not to exceed ten-party....	14.00
Business, Individual line.....	22.00
Business, Two-party .....	18.00
Rural roadway .....	5.00

The rate for desk telephones, extension telephones, and extension bells, to remain as in the company's schedule. These rates are to be the net rates collected quarterly in advance. If rentals are not paid in advance, a ten per cent. penalty may be added to these rates.

The rentals within the city of Dowagiac to be in accordance with the schedule now in force in said city.

Dated March 11, 1913.

## MISSISSIPPI.

### Railroad Commission.

#### IN RE INSTALLATION OF TELEPHONES IN ALL RAILROAD STATIONS IN TOWNS WHERE THERE ARE TELEPHONE EXCHANGES.

*Dated February 19, 1913.*

#### Installation of Telephones in Railroad Stations.

*Ordered,* That within thirty days, all railroads operating within the State of Mississippi shall install telephones, at their own expense, in all stations in towns where a telephone company maintains an exchange with twenty-five or more subscribers and a paid operator.\*

#### ORDER.

This cause coming on for hearing before the Mississippi Railroad Commission at a regular meeting this 19th day of February, 1913, and all the railroads in the State having been duly notified to appear and present any objections or reasons they might have in opposition to the said proposed order, and numbers of representatives of said roads appearing;

And after a hearing on the said matter, and having considered and understood the matter in all respects;

It is ordered and adjudged by the Mississippi Railroad Commission that all railroads operating in the said State of Mississippi be required to install and maintain telephones in all stations and depots where a telephone company maintains an exchange within twenty-five or more subscribers, and a paid operator; the said railroads are required to install a telephone or telephones in said depots at their own expense; said phone or phones may be installed in such building at such place as most suitable to the convenience of the railroad affected. Said telephones to be installed within thirty days from this date.

\*Editor's headnote.



Ordered and adjudged this the 19th day of February, 1913

To which order of the Commission the Gulf & Ship Island Railroad Company, the Illinois Central Railroad Company, the New Orleans Great Northern Railroad Company, the Yazoo & Mississippi Valley Railroad Company, then and there, duly accepted and are allowed ten days in which to prepare and file a bill of exceptions as of this date.

## NEW JERSEY.

### Board of Public Utility Commissioners.

#### IN THE MATTER OF THE COMPLAINT OF PHILIP B. ADAMS *vs.* THE NEW YORK TELEPHONE COMPANY.

*Decided December 23, 1912.*

#### Refusal of Service—Discrimination, When Undue—Failure to Justify Refusal.

Upon complaint that the New York Telephone Company refused to install a telephone in the complainant's residence at Allendale, although telephones were furnished in neighboring residences, the company answered that it was impossible to provide further service at Allendale without running additional open wire from Ridgewood, which would involve an undue expense in view of the contemplated installation of a central office at Allendale, which, when completed, would necessitate removal of this additional open wire.

*Held:* That the mere fact that a practice appears *prima facie* discriminatory does not necessarily make it a violation of the statute, and that the utility is entitled to show, if it can, that the discrimination is not arbitrary, undue or unjust. Neither is the mere withholding or refusal of service *ipso facto* a violation of the law, and a utility should be given an opportunity to show, if it can, that a demand for service is an unreasonable demand, or that the service refused cannot be reasonably furnished:

That the exigencies of the operation of public utilities are such that persons may be temporarily unable to obtain service without any necessary violation of their rights. Such would be the case if the defendant were now reconstructing its plant in Allendale and refused to provide temporary facilities for additional service. In such an instance a demand that the company cease withholding service would be unreasonable, inasmuch as the temporary benefit to a few subscribers might impede the progress of an improvement which would be ultimately advantageous to them as well as to others. No such contingency exists in the present case, however, because the Company is not actually reconstructing its plant, but merely contemplating such reconstruction after successfully negotiating with the Borough of Allendale for additional privileges. Even if these privileges should eventually be accorded, the expense of building the additional circuit necessary to give the service demanded will not be excessive:

That, in refusing telephone service to the complainant, the New York Telephone Company is withholding service which can reasonably be demanded and furnished, and that the company should supply the service.

An order was made accordingly.\*

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\*Editor's headnote.

*P. B. Adams*, in person.

*Robert V. Marye*, for the New York Telephone Company.

### REPORT.

The complainant in this matter alleges that he has a permanent residence at Allendale, Bergen County, that he requested the New York Telephone Company to install a telephone in his residence, and that his request was refused by said company. It is claimed that the New York Telephone Company furnishes telephone service to a Mr. Parigot, whose property immediately adjoins that of the complainant's residence on one side, and that telephone service is also provided a Mrs. Georgianna Fenny at her residence immediately adjoining complainant's property on the other side.

The Board was asked to make an order compelling the New York Telephone Company to install a telephone and to afford service in complainant's residence. The respondent stated in reply that the Borough of Allendale is included in the Allendale central office area, which includes the Boroughs of Saddle River, Upper Saddle River, Allendale and a portion of the Township of Orvil; that the Allendale central office district is now connected to the Ridgewood switchboard; but that on account of the distance from Ridgewood, plans had been made for the establishment of an Allendale central office; and that in order to secure municipal rights for new construction three applications had been made in the last two years to the Borough of Allendale for an ordinance.

It was claimed that while the ordinance negotiations have been under way, the open wires extending from Ridgewood to Allendale have all come into use, and that it is impossible to supply additional service in the Borough of Allendale without running additional open wire from Ridgewood.

It was further stated that other parties than the complainant had applied for service in Allendale; that such had been refused; and it was claimed that additional construction to supply this service before the permanent construction is provided would be expensive; would injuriously affect the

service, and would ultimately have to be removed when permanent construction is provided. A copy of respondent's answer was sent to the complainant and a date was fixed for hearing. The complainant notified the Board that on the hearing of his complaint he would "by reason of said answer failing to set forth any valid defense or any denial of the material allegations of the petitioner's complaint" claim that an order for service should be made to the petitioner "on the face of the petition and the admissions and insufficiencies of the answer alone." At the hearing a motion to this effect was made by the complainant. It was contended in support of this motion that because service is supplied by the respondent to other residents of Allendale, some of whom reside in close proximity to the residence of the complainant, and similar service is denied complainant, there is effected a discrimination in violation of the statute; and that said discrimination should be prohibited immediately by this Board. It was urged that testimony as to the cost of supplying service to the complainant or as to changes in construction contemplated by the company would be irrelevant and should not be heard. The law provides that no public utility "shall adopt, maintain or enforce any regulation, practice or measurement which shall be unjust, unreasonable, unduly preferential or otherwise in violation of law \* \* \* nor shall any public utility, as herein defined, provide or maintain any service that is unsafe, improper, or inadequate, or withhold or refuse any service which can reasonably be demanded and furnished when ordered by said board." The law provides further that no public utility shall subject "any particular person or corporation or locality or any particular description of traffic to any prejudice or disadvantage in any respect whatsoever." Upon the provisions of the law quoted above, the complainant claims that the refusal of service being established there is a violation of the law, and that nothing remains but for this Board to issue an order directing the respondent to cease such violation and to supply the service desired.

The motion for an order on this ground, without hearing testimony as to facts and circumstances involved, was denied by the Board. The mere fact that a practice appears *prima*

*facie* discriminatory does not necessarily make such practice a violation of the statute. The practice to be illegal must be arbitrarily or unjustly discriminatory; and, with *prima facie* discrimination admitted, the Board is of the opinion that a utility has a right to show, if it can, that the discrimination is not arbitrary, undue or unjust. Neither is the mere withholding or refusal of service *ipso facto* a violation of the law. The service withheld or refused must be service which "can reasonably be demanded and furnished"; and a utility should be given an opportunity to show, if it can, that a demand for service withheld or refused is an unreasonable demand or that such service cannot be reasonably furnished. Nor can an order be made without consideration of facts and circumstances, on a claim that a person refused service is subjected to a prejudice or disadvantage in violation of the law. The Board is of the opinion that it should consider this part of the statute in connection with that preceding, which defines the service as one that can reasonably be demanded and furnished. Injury or damage to a person by a public utility in wilful disregard of such person's rights does unquestionably constitute a prejudice prohibited by the statute. But the exigencies of the operation of public utilities are such that persons may be at times temporarily unable to obtain service, without a necessary violation of their rights or without suffering eventually any real disadvantage. If the New York Telephone Company were now changing its plant in Allendale and contiguous territory, and if the Board were convinced that the result of such change would be to add materially to the value of the service to subscribers generally in the Allendale district, it might not order the company to provide temporary construction, to furnish additional individual service, temporarily withheld, if the effect of such order would be to seriously interfere with or postpone the completion of the construction which would be beneficial to all. A demand that the company cease withholding or refusing such service would not be a reasonable demand, and a few subscribers ordered served under such circumstances, while temporarily benefited, might impede the progress of an

improvement which ultimately would be advantageous to them as well as others.

In the case at bar, however, there is no such contingency properly to be considered. The New York Telephone Company is now supplying service to numerous subscribers in the Borough of Allendale. It refuses service to the complainant, not because it is actually reconstructing its plant with the view of improving its service, but because it projects such reconstruction after successfully negotiating with the Borough to obtain additional privileges, which if obtained will affect the construction of its plant and equipment in the Allendale district. These negotiations have already extended over a period of two years, and there is no certainty of their speedy adjustment. They do not provide a sufficient reason for withholding service from the complainant. It is possible that the privileges sought by the company would enable it to improve its plant and service; but if the municipal authorities persist in declining to give a franchise which contemplates the substitution of magneto instruments for the common battery type, this Board cannot avoid ordering service to be afforded because the Board may think the projected reconstruction of the plant would be advantageous to all subscribers in Allendale.

It appears from testimony taken at the hearing that two more subscribers can be afforded service with present facilities, and that by providing an additional circuit from Ridgewood eight subscribers in addition to these two can be added to the company's lines. It does not appear that to provide this service would necessitate any greater expense than is involved in running the existing circuits. Even if the municipal privilege should eventually be accorded, the expense of running the additional circuits will not be excessive. The Board is therefore of the opinion and finds that the New York Telephone Company in refusing telephone service to Philip B. Adams at his residence at Allendale is withholding and refusing service which can reasonably be demanded and furnished; that the said New York Telephone Company should cease withholding or refusing such service, and should supply the same. An order will be so entered.

Dated December 23rd, 1912.

ORDER.

This case having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had, and the Board having on the date hereof made and filed a report containing its findings of facts and conclusions thereon, which said report is hereby referred to and made *part* hereof, the Board of Public Utility Commissioners

*Hereby orders*, the New York Telephone Company to supply to Philip B. Adams, on demand by him, telephone service at his residence at Allendale, New Jersey, upon the same terms that other subscribers of said New York Telephone Company are supplied with service at their residences in said borough.

This Order shall become effective January 14th, 1913.  
Dated December 23rd, 1912.

## OHIO.

### Public Service Commission.

**THE WESTERN UNION TELEGRAPH COMPANY, *Complainant,***  
*vs.*

**THE CLEVELAND, PAINESVILLE AND EASTERN RAILROAD COM-  
PANY, *Defendant.***

No. 155.

*Decided February 11, 1913.*

### **Physical Condition of Transmission Lines—Clearance of Wires— Specifications for Safe Construction—Inspections and Reports.**

It was found that some of the defendant's wires were at several points less than 40 inches above the complainant's lines, and further, that the installation of certain devices was essential to safe construction. The Commission therefore ordered the defendant, among other things, to install strain insulators, strain guys and push guys in specified instances; to maintain a clearance of not less than six feet between its high tension transmission line and the wires of The Western Union Telegraph Company; to cause inspection of its high tension line to be made by competent linemen at intervals of not more than ten days; and to keep on file, subject to the examination of the Commission, all reports of inspections and all reports of troubles on this line.\*

### **ORDER.**

This case came on to be heard upon the pleadings, the evidence and exhibits, and was argued by counsel, and the Commission, being fully advised in the premises, finds that at a point slightly over one-half mile west of the west corporation line of the village of Mentor, Ohio, on property owned by W. P. Murray, the defendant company has erected its line in such manner that the south wire of its three-phase transmission line at three points in ten spans is vertically over the line of the complainant at a height not to exceed forty inches from the telegraph wires, and that this method

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\*Editor's headnote.



of construction creates a dangerous condition and is unwarranted on the part of the defendant company by conditions there present.

The Commission further finds that at certain points on the high tension line of the defendant company between Forbes Street, in the city of Painesville, Ohio, and the place where the crossing is made at the east line of Willoughby Township, said defendant company has erected strain guys on the south side of its poles and that safe construction requires that all of said guys have strain insulators cut in near the point where the guy is attached to the anchor bolt.

The Commission further finds that where strain guys have been or may be, in the future, installed by the defendant company on the south side of its said line, correct engineering principles and safe construction require that there should also be installed and attached to the same poles, either a strain guy on the north side of the pole or, if that is found to be impracticable, then that a push guy should be installed, in addition to the strain guy, upon the south side of said pole. It is therefore,

*Ordered*, That the Cleveland, Painesville and Eastern Railroad Company, be, and it is hereby notified and required to install side arms, supported by brackets, upon the twelve poles owned by said defendant company and located on the property of W. F. Murray, said side arms to be of sufficient length and so placed upon the poles as to afford a clearance of not less than six (6) feet between any one and all of said defendant company's high tension lines and the nearest wires of The Western Union Telegraph Company in the position that the wires of said The Western Union Telegraph Company are now located. It is further

*Ordered*, That said defendant company be, and it is hereby notified and required to insert a suitable strain insulator, in every case where a strain guy is used on the south side of any pole of said defendant company, located north of the lines of The Western Union Telegraph Company, between the eastern limits of Painesville, Ohio, and the point of crossing at the east line of Willoughby Township, and to insert a similar insulator in the guy close to the point where said guy is attached to the anchor bolt. It is further

*Ordered*, That said defendant company be and it is hereby notified and required, in every case where a strain guy is installed on the south side of any pole in that portion of the line of the defendant company described in the second paragraph of this order, to also install a strain guy upon the north side of said pole or, if the installation of said strain guy on the north side of said pole is found to be impracticable, then in that event, a push guy shall be installed on the south side of the pole in such manner as to prevent the pole leaning south under the combined influence of the strain guy and the prevailing north winds. It is further

*Ordered*, That said defendant company be, and it is hereby notified and required to maintain a clearance distance of not less than six (6) feet between any and all of its high tension transmission lines or wires and any and all of the wires of said The Western Union Telegraph Company as said wires of said telegraph company are now located between the point of crossing of said high tension line at Forbes Street in Painesville, Ohio, and the crossing thereof at the east line of Willoughby Township. It is further

*Ordered*, That the changes and improvements hereinabove ordered be fully completed on or before the first day of March, 1913. It is further

*Ordered*, That said defendant Company be, and it is hereby notified and required to cause an inspection to be made, by competent linemen, at regular intervals of not to exceed ten (10) days, of all, and every part of its high tension line between its generating station in Painesville, Ohio, and substation in Willoughby, Ohio, and that this inspection shall be made to include and cover insulators, tie wires, pins, cross arms, ground wires and its support, and the wire connecting the ground wire with the earth. It is further

*Ordered*, That said defendant company be, and it is hereby notified and required to keep on file in the office of the company at Willoughby, Ohio, subject to inspection by The Public Service Commission of Ohio, or its duly accredited representatives, all reports of inspection made hereunder and all reports of trouble on this line.

Dated at Columbus, Ohio, this eleventh day of February, 1913.

**IN THE MATTER OF THE APPLICATION OF THE FARMERS' TELEPHONE COMPANY TO EXERCISE FRANCHISES WITHIN THE CORPORATION OF ANNA, SHELBY COUNTY, OHIO; ALSO IN THAT PART OF THE CITY OF SIDNEY, SHELBY COUNTY, OHIO, NOT NOW OCCUPIED BY IT; AND ALSO IN THE RURAL DISTRICTS OF SAID SHELBY COUNTY, OHIO.\***

**No. 293.**

*Decided March 20, 1913.*

**Public Convenience and Necessity—Occupation of Territory  
Prior to Creation of Commission—Extension of Present  
Service.**

Upon application by The Farmers' Telephone Company for a certificate of public convenience and necessity authorizing it to extend its lines and furnish telephone service in localities in Shelby County, not hitherto occupied by it. The Sidney Telephone Company appeared in opposition to the granting of the application, alleging that adequate telephone service was being furnished and had long been furnished by it in all of the localities in question and denying that public convenience rendered it necessary or proper for the applicant to extend its lines and furnish service in these localities.

Finding that in accordance with the provisions of its charter and in pursuance of franchises granted by various local authorities in Shelby County, the applicant had built a telephone system and was conducting a general telephone business in Shelby County prior to the filing of this application and prior to July 1, 1911, the Commission granted the application.†

**ORDER.**

The Farmers' Telephone Company having, on the twelfth day of July, 1912, filed its petition praying for a certificate showing that it is proper and necessary, for the public convenience, for said company to exercise its licenses, permits, rights and franchises, heretofore granted by proper public authority, and, thereafter, to own and operate a plant and system for furnishing telephone service and to extend its lines and furnish its service in and around the corporation of Anna, Shelby County, Ohio, in the City of Sidney, Shelby County, Ohio, and in the rural districts of said Shelby

\*An opinion upon the question involved in this case was rendered by the Attorney General of Ohio on November 22, 1912.

†Editor's headnote.

County, Ohio, and the Sidney Telephone Company having, by answer to the petition of said Farmers' Telephone Company, denied the material allegations of said petition, and having further alleged that adequate telephone service, at the time of the filing of said petition and for a long time prior thereto, was being furnished in each and all of said localities and to all the inhabitants thereof who desired the same by The Sidney Telephone Company, and denying specifically that the public convenience rendered necessary or proper the further exercise of any license, permit, right or franchise granted to, obtained or acquired by said The Farmers' Telephone Company to own and operate a plant for furnishing telephone service, or to further extend its lines and furnish its service in said localities, or either of them, and said matter having been set down for hearing on Tuesday, August sixth, 1912, at ten o'clock a. m., and due notice of the time and place of said hearing having been given to all parties interested, and having been heard on said day and the succeeding day and the further consideration thereof continued from day to day the same came on this day for final consideration.

After considering the pleadings, the evidence and the arguments of counsel, and examining the exhibits, and being fully advised in the premises, the Commission finds that said The Farmers' Telephone Company was duly incorporated under the laws of the State of Ohio, for the purpose, among others, of carrying on and doing a general telephone business for profit in Shelby County, Ohio, with its principal office and place of business in Sidney, Ohio; that, in accordance with its charter provisions and in pursuance of the licenses, permits, rights and franchises granted to said The Farmers' Telephone Company by various local authorities in said Shelby County, said The Farmers' Telephone Company had, prior to the filing of this application and prior to the first day of July, 1911, built and established a telephone plant and system and had installed a large number of telephones in the business houses and residences of Sidney, Ohio, and in the rural communities and districts of said Shelby County, Ohio, and was, at said times, doing a general telephone business in said Shelby County, Ohio.

The Commission finds that it is proper and necessary, for the public convenience, for the said Farmers' Telephone Company to exercise licenses, permits, rights and franchises, which said The Farmers' Telephone Company has obtained, secured and acquired, to own and operate a plant for furnishing telephone service, and to extend its lines and furnish its service in and around the Village of Anna, the City of Sidney, and in the rural districts of Shelby County, Ohio, as fully set out in the petition filed herein by said The Farmers' Telephone Company. It is, therefore,

*Ordered*, That this Commission certify, and it does hereby certify, that it is proper and necessary, for the public convenience, for the said The Farmers' Telephone Company to exercise its licenses, permits, rights and franchises which said The Farmers' Telephone Company has obtained, secured or acquired, to own and operate a plant for furnishing telephone service, and to extend its lines and furnish its service in and around the Village of Anna, and in the City of Sidney and in the rural districts of Shelby County, Ohio, as fully set out in said petition, which is made a part hereof by reference. It is further,

*Ordered*, That said The Farmers' Telephone Company be, and it is hereby authorized to operate its plant for furnishing telephone service, and to extend its lines and furnish its service in and around the Village of Anna, and in the City of Sidney, and in the rural districts of Shelby County, Ohio, in the manner fully set out in said petition. It is further

*Ordered*, That the certificate of public convenience herein granted be, and the same is hereby made valid, and the authority herein conferred may be exercised, from and after this date.

Dated at Columbus, Ohio, this twentieth day of March, 1913.

## OKLAHOMA.

### Corporation Commission.

IN RE J. W. CRAWFORD, ET AL., BOYNTON, *Complainants*, vs.  
JAMES HARRIS, OWNER OF THE BOYNTON TELEPHONE  
EXCHANGE, *Defendant*.

Cause No. 1730—Order No. 674.

*Decided February 14, 1913.*

### Unserviceable Condition of Telephone Exchange—Specific Repairs Required by Commission.

Upon complaint as to the unserviceable physical condition of the Boynton Telephone Exchange, the Commission ordered the defendant to make certain specified repairs.\*

### OPINION AND ORDER.

#### *By the Commission:*

The complainant alleges that the physical condition of the Boynton Telephone Exchange is such as to render it unserviceable to the general needs of the town for telephone service and asks the Commission that the owner of the exchange be required to make needed repairs and to properly maintain and operate the plant.

Hearing was held in the office of the Commission in Oklahoma City on February 11, 1913, at which time the owner of the exchange admitted that the physical condition of the plant was bad and asked that he be given sixty days' time in which to make the needed repairs and render efficient service.

It is the opinion of the Commission that the request of the defendant to be given sixty days' time in which to repair his plant is reasonable and should be granted.

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\*Editor's headnote.

*It is therefore ordered,* That James Harris, owner of the Boynton Telephone Exchange, shall make the following repairs to his telephone plant:

1. The central office equipment, including the switch-board, distributing rack, lightning arresters, and all other apparatus, shall be promptly and properly adjusted.

2. A suitable support sufficient to carry the cable and all wires entering the building wherein the central office is located shall be placed from the "office pole" to the building.

3. All poles shall be straightened up, properly guyed.

4. All line wires shall be pulled up so there will not be "slack" enough to allow the wires to become "crossed" and cause trouble.

5. Replace all broken cross arms, insulators, knobs and fixtures of support.

6. All bridle wires, especially on junction poles, shall be placed in bridle rings or under cleats and properly guyed.

7. All joints where line, bridle, drop, or other line joints are made, shall be properly soldered. This does not include splices made by patented "sleeves" or joints.

8. Suitable fixtures shall be placed on all buildings to which "drop" or other necessary wires run, and to which such wires should be securely attached.

9. All telephone instruments shall be inspected, loose wires made fast and new batteries installed where necessary.

10. All rural lines owned shall be thoroughly overhauled, poles straightened up, wires pulled, and instruments inspected and repaired where necessary.

11. *It is further ordered,* That all necessary incidental repairs not named above shall be promptly and properly made.

This Order shall take effect on the 1st day of May, A. D. 1913.

## **SOUTH CAROLINA**

### **Railroad Commission.**

**IN THE MATTER OF CHANGE OF METHOD OF SERVICE AT JOINT  
OFFICES BY TELEGRAPH COMPANIES OPERATING IN SOUTH  
CAROLINA.**

**Order No. 135.**

*Dated February 13, 1913.*

**Thirty Days' Notice Required of Changes in Method of Service  
at Joint Telegraph Offices [Ed.]**

### **ORDER.**

No change in the present method by telegraph companies operating in this State through what is known as joint offices shall be made until notice of such proposed change shall have been filed in the office of the Railroad Commission, and also posted at such joint office thirty days, and at the expiration of such thirty days such proposed change of offices shall be effective, unless within the said thirty days written objection to such change shall be filed by an interested party or parties in the office of the Railroad Commission, which objection shall be passed upon by said Commission.



## **WISCONSIN.**

### **Railroad Commission.**

#### **IN RE APPLICATION OF THE MELVILLE SETTLEMENT TELEPHONE COMPANY FOR AUTHORITY TO INCREASE RATES.**

**File U—457.**

*Decided January 31, 1913.*

#### **Increase of Rates—Insufficient Revenue—Comparison with Similar Utilities.**

Upon application to increase the annual rental from \$9.00 to \$12.00 on the ground that the \$9.00 rate was not sufficiently high to take care of the depreciation and repairs, the Commission held that its analyses of the costs of operation for a number of small telephone utilities, indicated that a rate of \$12.00 per year is in no way unreasonable for a utility, such as the Melville Settlement Telephone Company, equipped with metallic circuits and furnishing free service with such exchanges as those of the Wisconsin Telephone Company at Eau Claire and Chippewa Falls. Consequently the application was granted.\*

#### **DECISION AND ORDER.**

Application in this matter was filed with the Commission December 2, 1912. It sets forth that the applicant is a public utility engaged in the telephone business in the town of La Fayette, Chippewa County, Wisconsin, that the lawful rates of the applicant now in effect, are: \$9.00 per 'phone per year, that the present rates are not sufficiently high to take care of the depreciation and the repairs that are necessary on the lines, and that the applicant desires to put into effect a rate of \$12.00 per 'phone per year. Hearing was set for January 16, 1913, but no appearances were made. Some information relative to the situation was submitted by the applicant and such investigation as the conditions permitted was made by the Commission.

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\*Editor's headnote.

Applicant states that the \$9.00 now received from each telephone user is divided as follows:

To Wisconsin Telephone Co.....	\$3.00
To Local Central.....	4.20
Maintenance and Operation.....	1.80

The schedule of rates asked for would make \$4.80 per 'phone per year available for maintenance and operation, depreciation, interest and taxes.

Under the terms of the applicant's contract with the Wisconsin Telephone Company the latter company agrees to construct and maintain one metallic circuit from its exchange at Chippewa Falls, to connect with the applicant's system at a point not to exceed one and one-half miles from the Chippewa Falls exchange, for each twenty subscribers of the applicant. Applicant's subscribers have unlimited service through the exchanges at Eau Claire and Chippewa Falls.

No details were submitted with regard to the expenses of the local exchange of the applicant, for which \$4.20 per 'phone per year is paid.

The cost of the plant as reported for June 30, 1912, was \$3,850. All circuits are reported as metallic. There were 49 miles of pole line and 110 miles of wire.

No extended analysis of costs has been practicable in this case, but the Commission has made such analyses for a considerable number of small telephone utilities and these point to the conclusion that for a utility furnishing metallic circuits and having free service with such exchanges as those of the Wisconsin Telephone Company at Eau Claire and Chippewa Falls, a rate of \$12.00 per 'phone per year is in no way unreasonable.

The Applicant, the Melville Settlement Telephone Company, is therefore authorized to discontinue its present schedule of rates for exchange service and to substitute therefore a rate of \$12.00 per 'phone per year.

Dated at Madison, Wisconsin, this 31st day of January, 1913.

IN RE APPLICATION OF ROCKLAND TELEPHONE COMPANY FOR  
AUTHORITY TO INCREASE ITS RATES.

*Decided January 31, 1913.*

**Rural Telephone Companies—Increase of Rates—Discrimination in Favor of Stockholders—Original Cost—Depreciation—Rate of Return—Rental of Equipment.**

Application by the Rockland Telephone Company for authority to discontinue its existing system of charges under which stockholders were charged no rental and non-stockholders were charged an annual rate of \$12.00, and to substitute therefor annual charges of \$5.00 to stockholders and \$12.00 to non-stockholders.

The accounts of the company were incomplete and the receipts and expenditures unclassified but the Commission segregated the construction expenditures from the operating expenses and found the cost of the plant to have been \$4,700 as against the company's claim that the investment amounted to \$6,500. This difference was accounted for by the inclusion in the company's figure of the cost of subscribers' instruments for which the stockholders had reimbursed the company. The Commission estimated the cost of service by means of an examination of the company's accounts and a comparison of the expenses of similarly situated companies. An annual rental expense of \$1.50 per telephone, to be paid to subscribers owning their instruments, was included in the estimate. Allowances of 7% upon the cost of plant, (\$4,700), were made for interest and depreciation respectively.

The Commission held that the company's proposal to charge stockholders a lower rate than non-stockholders involved a discrimination in violation of the Public Utilities Law, but that the company should pay a rental to subscribers owning their instruments. It held, further, that a revision of rates was necessary in order to care for the estimated expenses and that from a consideration of local conditions and of the rates charged for telephonic service upon other rural systems, an annual rate of \$9.00 appeared proper.

*Ordered*, 1. That the company substitute an annual rate of \$9.00 for its existing schedule of annual rentals.

2. That the company shall pay an annual rental of \$1.50 to subscribers who own and maintain their own instruments.

3. That the company shall so adjust its accounts and records as to insure an annual provision for depreciation of not less than 7% on the cost of the plant.\*

**DECISION AND ORDER.**

Application in this case was filed on October 22, 1912, by the Rockland Telephone Company.

The petition represents that the applicant is a corporation organized under the laws of Wisconsin and having its

\*Editor's headnote.

principal office and place of business in the town of Rockland in Manitowoc County, Wisconsin.

The petition further represents:

"That the company was organized in February, 1908, for the purpose of carrying on and constructing a telephone business and furnishing telephone service to its members and others.

That said company was originally organized with sixty shares of capital stock of par value of Twenty-five Dollars each.

That the Articles of incorporation of said company from time to time have been amended so that at the present time said company has an authorized capital stock of Six Thousand Dollars represented by Two Hundred and Forty Shares.

That of these shares One Hundred and Thirty-eight have been actually sold and issued. That the stockholders of said company are substantially all farmers residing in the towns of Rockland and Maple Grove in the County of Manitowoc and the town of Rantoul in the County of Calmut. That said company was organized and has been conducted as a farmers' telephone company, each person holding one share of stock and each shareholder has been entitled to telephone service upon the lines of this company. That this company now has twenty-six miles of pole lines and furnishes telephone service to its one hundred and thirty-eight stockholders and furnishes telephone service to four other persons. That service is furnished to other persons than stockholders at an annual charge of Twelve Dollars per year. That no regular annual charge has been made for telephone service to stockholders of this company but some incidental charges have been made as for long distance service or service upon the lines of the company and on lines of some other company and a charge of ten cents per minute for persons not stockholders or regular patrons, also a charge of twenty-five cents per minute for the use of the telephone for each minute used over five minutes at one time. That the total revenue from these various sources during the last year did not exceed Twenty-five Dollars. That this amount was insufficient to provide for the maintenance of the telephone lines and service of this

company and that the company during the last two or three years has been constantly becoming more and more in debt until it is now indebted in the sum of Seven Hundred Dollars for money used in improvements and repairs of its lines and service. That the company has endeavored to get various contributions from the members of the company to pay the debts of this company and at its last stockholders' meeting held in February, 1911, voted to ask for such contributions in the sum of Five Dollars from each member upon the condition that if all paid such Five Dollars sum, then the same should be donations but if each and all did not pay Five Dollars then such contributions should be a loan to the company. That about one-half of the members of the company have advanced the Five Dollars but the remainder of the members of said company have failed to make such contribution. Therefore the company is still in debt for the whole amount and is becoming more and more in debt and as time advances, the poles and lines and instruments of the company require more and more attention and more and more expense for maintenance."

The application states finally, that in view of these conditions, it is imperative that the method of business of the company be changed and that an annual charge be made to each person receiving service from this company. A fair and reasonable charge for the service of the company, the petitioner claims, would be \$5.00 a year to stockholders and \$12.00 a year to persons not stockholders.

Applicant asks that "an order be entered permitting and authorizing said company to put in force a schedule of charges as herein prayed for or such other schedule of charges as may be just and lawful in the premises and also for the enforcement of collection of said charges."

A hearing was set for November 18, 1912, but no appearances were made.

The Rockland Telephone Company up to the time of filing the above petition, had failed to comply with the public utilities law requiring utilities to file with this Commission a statement of their rates and annual reports of their operations. Consequently no information regarding the company

prior to this application has ever been received by this Commission. In order to pass upon the petition, therefore, a thorough examination of the applicant's books and records was made by the Commission. As a result of the examination into the records and practices of the company, the following facts appear.

This is a telephone company organized for strictly rural service. It was incorporated in February, 1908, and was capitalized at \$1,500.00 in sixty shares at \$25.00 each. By amendment of June 26, 1908, the capitalization was increased to \$3,000.00 and by amendment of April 15, 1911, the capital stock was placed at 240 shares at \$25.00, making a total authorized capitalization of \$6,000.00. From an examination of the stock record it appears that by the close of 1912, 141 shares had been sold. The stocks outstanding January 1, 1913, therefore, amounted to \$3,525.00.

Out of these 141 shareholders 136 have telephone connection with the Rockland Telephone Company at the present time. Besides the shareholders there are four "renters" who do not own stock but who receive regular telephone service. These 140 make up the total subscribers' list.

Before giving a statement of the company's charges, it would be well to consider some features of the physical construction of the system. The Rockland Telephone Company has no switchboard of its own. Messages requiring a switchboard operator are handled chiefly by the central of the Manitowoc and Western Telephone Company whose central office is located in the village of Reedsville. Some messages are handled by the central of the Wisconsin Telephone Company, at Potter. The system is divided into six circuits having an average of about 24 subscribers to each. A subscriber may call another on the same circuit without having the message pass through central. Calls between circuits, however, require switching. Two circuits connect with the exchange at Potter, while the remaining four circuits make use of the exchange at Reedsville. The Rockland Company's lines do not enter the villages of Reedsville and Potter, but the Manitowoc and Western Company and the Wisconsin Telephone Company respectively extend their lines out to connect with the rural company.

The arrangement with the two exchanges is that a switching charge of three cents per message is to be assessed against the Rockland Telephone Company for every connection made by either of the two centrals. The Rockland Company receives monthly statements from the exchanges and collects the switching charges from each subscriber according to the calls put in by him. All subscribers, whether stockholders or not, must pay their switching charges.

The regular charges made by the Rockland Telephone Company at the time of this application, are as follows:

Stockholders—No rental charge.

Non-stockholders—\$12.00 a year rental.

10 cents per message for persons who are neither stockholders or regular customers.

25 cents per minute for use of the line for longer than 5 minutes at a time when line is requested.

25 cents per message for use of telephone between the hours of 9 p. m. and 7 a. m. for unnecessary purposes.

The last two charges do not constitute a regular source of revenue but are rather in the nature of fines or penalties to prevent abuse of lines. The effect of the other items upon revenue will be taken up later.

It has been necessary to inquire into the expenditures for the past five years in order to determine the investment in the system. This investment has been rather difficult to determine, owing to incompleteness of accounts. The financial books consist of a cash book containing a record of annual receipts and expenditures unclassified and of a minute book containing certain summary statements of the financial condition of the company. So far as practicable, the construction expenditures have been segregated from operating expenses and the following results have been arrived at.

#### ANNUAL CONSTRUCTION EXPENDITURES.

	1908	1909	1910	1911	1912	Total
Organization	197.95	6.00	21.90	34.00		259.85
Wire plant	2330.57	1633.82	270.25	59.68		4294.32
Interest			20.00	27.30		47.30
Misc. Equipment	39.36					39.36
Misc. Const.	41.00	23.73	17.00	11.00	5.00	97.73
Total	2608.88	1663.55	329.15	131.98	5.00	4738.56

The total investment in the system is thus determined at approximately \$4,700.00. This is considerably lower than the amount given in the company's petition where the investment is placed at about \$6,500.00. The investment would aggregate this much if the cost of subscriber's instruments were considered. Since the 136 shareholders now connected paid \$12.00 each for their own instruments, there is an amount of approximately \$1,630.00, expended by the company for telephone instruments for which the company was reimbursed. The annual construction expenditures given in the above table, therefore, do not include the value of the telephone instruments. The proper amounts to be excluded each year on this account were determined from the record of yearly collections from subscribers. The final amount of \$4,700.00 represents, as nearly as it can be determined, the actual investment of the company. This value may appear somewhat low, but as there is no land and no central office owned by the company, the \$4,700.00 seems to be a fair value.

Using this value of plant and other information given in the minutes of the last annual meeting, an approximate balance sheet can be constructed as follows:

## BALANCE SHEET AS OF JANUARY 1, 1913.

ASSETS.		LIABILITIES.	
Cost of Plant	\$4700.00	Capital Stock (141 shares)	\$3525.00
Cash	1.93	Notes Payable	250.00
Material & Supplies	185.83	Accts. Payable (amounts received on resolution)	393.00
	<hr/>	Surplus	717.76
	\$4887.76		<hr/>
			\$4887.76

As has already been pointed out, no separation of expenditures into accounts has been made in the company's books. This fact has made it difficult to determine accurately its operating expenses. The items which have been clearly identified as expenses other than construction are given below:



## EXPENSE CHARGES.

	1908	1909	1910	1911	1912	Total
Repairing line	5.50	64.14	4.75	55.67	25.34	155.90
Taxes		.78	2.18	2.20	7.20	12.36
Expense of Meetings		35.50	12.00	48.00	37.75	133.25
Traveling Expense		6.00		21.50		27.50
Secretary's Salary		15.00	15.00	15.00	15.00	60.00
Stationery & Supplies				5.50	3.87	9.37
Collection Expense		8.00	5.00	5.00	5.00	23.00
Interest					3.75	3.75
Total	5.50	129.42	38.93	152.87	98.41	425.13

While the expenses cannot be definitely determined from the company's records, still it is evident that their expenses, excluding depreciation, are very low. No salaries are paid other than \$15.00 per year to the secretary. Directors are paid \$2.00 for every meeting they attend. This expense of meetings for the past four years averages \$35.00 per year. Taxes amount to 5 cents per 'phone. These items are regular expenses occurring every year. Operation and maintenance of wire plant must be estimated apart from company's books as the repairs to line during the first few years, when the company has scarcely passed through the construction period, cannot be taken as an indication of what they will be in the future. From the 1910 Report of the Commission an analysis of the wire plant expenses of 32 Class D independent telephone companies with from 24 to 48 miles of pole line was made which showed a weighted average of \$6.69, an arithmetic average of \$9.85, and a median of \$5.72 per pole mile. An analysis of 9 Class C companies of same range of pole miles showed a weighted average of \$8.04, an arithmetic average of \$7.50 and a median of \$8.16 per pole mile. An allowance of \$8.00 per pole mile, therefore, seems ample in this instance.

Using these expense figures and allowing 7% on \$4,700.00 for interest and depreciation respectively, the following expenses result:

## OPERATING EXPENSES.

Wire Plant Expenses .....	\$ 280.00*
Substation Expense .....	204.00**
General Office Salaries .....	15.00
Misc. General Expenses .....	45.00***
Taxes .....	7.00
Commercial .....	5.00
<hr/>	
Total of above .....	\$ 556.00
Depreciation 7% .....	329.00
<hr/>	
Total Operating Expenses .....	\$ 885.00
Interest 7% .....	329.00
<hr/>	
Total .....	\$ 1,214.00

The substation expense item, \$204.00, requires some explanation. All of the telephone instruments, excepting those used by non-stockholders, are owned by the individual subscribers. By this private ownership of instruments and by the agreement that subscribers shall maintain their own 'phones, the company is relieved of the necessity of meeting interest, depreciation, and repairs on such instruments. Some consideration should be given, in fixing a rate, to the difference in the position of those who have bought investments and those who have not. If the company's proposal were carried out and \$5.00 were charged to stockholders as against \$12.00 to non-stockholders, a discrimination in violation of sec. 1797m-90 of the public utilities law would result. However, according to the same section it is permissible for utilities to pay a rental for equipment or facilities furnished by the subscribers. In this instance, the expenses for depreciation, repairs and interest saved to the company would

\* \$8.00 per pole mile for 35 pole miles.

\*\* 136 instruments at \$1.50 each.

\*\*\* Includes expense of meetings, \$35.00, and \$10.00 for supplies and miscellaneous.

be about \$1.50 per year for each instrument. This amount the company should pay as a rental to subscribers owning their own 'phones.

There are at present only two sources of revenue to the company. One source is the rental charged to the four non-stockholders. This brings in \$48.00 a year. The other source is the toll earnings collected by the Manitowoc and Western Exchange at Reedsville, and the Wisconsin Telephone Company's exchange at Potter. These tolls are the 10 cent charges imposed by the Rockland Telephone Company for use of its lines by outsiders. Last year this revenue amounted to \$45.00, making a total revenue of \$93.00 for 1912. Obviously, a revision in rates must be provided to care for the \$1,214.00 expenses.

From a consideration of local conditions and of the rates charged for telephone service upon other rural systems, it appears that a rate proper in this instance would be an annual charge of \$9.00 per subscriber. This would furnish a revenue of \$1,260.00 a year which will fully cover the expenses. Allowing \$45.00 a year as probable revenue from tolls, the company's total revenue will come to \$1,305.00 which gives ample allowance for expenses which may not have been considered. The \$9.00 would be a gross rate so that those who own their instruments and therefore receive a rental of \$1.50 would pay a net rental of \$7.50. To stockholders, the expense of telephone service would be somewhat further reduced through any dividends which might be declared.

*Therefore, it is ordered:*

1. That the petitioner in this case, the Rockland Telephone Company, abandon that portion of its rate schedule which relates to annual rental charges and substitute therefor a charge of \$9.00 per year per 'phone.

2. That the company shall pay an annual rental of \$1.50 to subscribers who own and maintain their own instruments.

3. That the company shall so adjust its accounts and records as to insure an annual provision for depreciation of not less than 7% on the cost of the plant.

— ted at Madison, Wisconsin, this 31st day of January,

**HERBERT A. HOFFMAN, ET AL., *vs.* WAUSAU TELEPHONE COMPANY.**

*Decided February 26, 1913.*

**Inadequate Service—Delay in Clearing Trouble—Improper Disconnection of Telephones—Reasonableness of Rates—Reproduction Cost—Present Value—Interest and Depreciation—Individual and Party Line Business Rates.**

Complaint against the Wausau Telephone Company alleging (1) that owing to lack of proper attention to repairs, the service of subscribers was frequently interrupted for considerable periods of time; (2) that subscribers whose bills had been paid were frequently shut off without notice; (3) that the rates charged were exorbitant and discriminatory.

1. The Commission discussed the evidence relating to the delays in attending to trouble reports, and found that for some time prior to the hearing, trouble reports had been handled with considerable promptness, although frequent delays in clearing trouble had occurred in the spring and summer of 1912. The Commission held that it is the company's duty to clear trouble at the earliest time consistent with good management, and that it should undertake to have at all times a force of competent employees sufficient to handle reports of trouble, or trouble detected at the central office, within a very short time after such report or detection.

2. With respect to the second ground of complaint, the Commission held that the company must keep such records as will enable it to determine accurately the facts with regard to the indebtedness of any patron and that patrons should not be shut off for non-payment of bills without reasonable notice.

3. In dealing with the question of rates, the Commission determined the reproduction cost new and the present value of the company's property and held that no general reduction of rates could be ordered since the amount available for interest and depreciation under the existing schedule was less than 8% upon the present value. It further held that the schedule in effect was defective in that it did not provide a different rate for party line business telephones than for individual line business telephones, and that the best development of the telephone business among the smaller business users would be obtained by putting into effect a rate for party line business telephones substantially less than the individual line rate.

*Ordered,* That the respondent make such changes as may be necessary to enable it to furnish efficient service and handle trouble reports promptly and efficiently:

That the respondent keep an accurate record in permanent form of all trouble reported or detected, showing the history thereof:

That the respondent keep a record showing the status of its financial relations with each of its subscribers:

That no subscriber shall be cut off for non-payment of bills except after reasonable notice:

That the respondent file a rate for party line business service, such rate to be less than the rate charged for individual line business service.\*

\*Editor's headnote.

## DECISION AND ORDER.

Petition in this matter was dated July 12, 1912. Petitioners are twenty-five persons, firms and corporations, of Wausau, Wis. Respondent is a telephone utility, engaged in the business of managing and operating a telephone exchange within the city of Wausau. The matters complained of relate both to service and to rates. The principal charges with regard to service are: First, that the service is inadequate because the system has not been kept properly in repair and as a consequence subscribers have been unable to secure service for periods of time which, according to the petition, have in some cases been as great as a week; Second, that the company has put its subscribers to trouble and inconvenience by shutting off its patrons without notice even when all bills for service were paid. With regard to the rates, petitioners allege that the rates as charged are exorbitant and discriminatory and that because of this condition and the inadequate service furnished, many of the smaller business places have not been able to afford to install telephones and that as a consequence people of the city are not receiving the telephone service which they should have.

Hearing in this matter was held at Wausau, Wisconsin, Oct. 28, 1912. Appearances were as follows: For petitioners, Riley & Ford, by James P. Riley. For respondent, Kreutzer, Bird, Rosenberry & Okoneski, by C. B. Bird, and G. D. Jones.

Matters taken up at the hearing related almost entirely to the quality of service rendered. As outlined in the petition, in this matter, the principal causes of complaint in regard to service appear to have been due to delays in clearing up trouble reports and to the action of the company in shutting off subscribers for non-payment of bills even though bills had as an actual fact been paid. Considerable testimony was introduced to show that the delays in clearing trouble were unnecessarily long and that the attitude of the utility had in some instances been one of delay. It seems to have been clearly established that for some time during the spring and summer of 1912 there was considerable delay in clearing

trouble. A number of witnesses, however, testified that for some time prior to the date of the hearing, the service had been good. There is no evidence that tends to show that the company had willfully or deliberately caused any delay in clearing trouble or that it had not complied with requests for inspections and investigations of trouble with as much promptness as its force would permit. The issue seems to be rather whether the company had a sufficient force of employees to look after cases of trouble and to keep the system in shape to furnish reasonable service. On behalf of the respondent, it was pointed out that some of the cases of trouble arose from the fact that the company in the spring of 1912 moved its central office into a new building where it is now located and that during the summer of 1912, severe storms and floods caused considerable damage to its system which sometimes made it impossible for the utility to clear trouble reports promptly. From such testimony as was introduced, it seems that the service rendered for some time prior to the hearing of this case had been fairly satisfactory and that trouble reports were handled with considerable promptness. It does not appear to be necessary to attempt at this time to determine the degree to which the telephone utility is responsible for the delays during the spring and summer of 1912. Whatever may have been its degree of responsibility for these delays, its duties with regard to the furnishing of adequate telephone service are not affected thereby. It is the duty of the utility to furnish a reasonably adequate telephone service to all of its subscribers and to do everything that may be reasonably required to furnish that service at all times and without unnecessary delay. This case is no exception to the general rule and the telephone company must furnish adequate service to its subscribers in the city of Wausau and to such subscribers outside of the city as it undertakes to serve.

With regard to the second portion of the complaint, relating to service, viz., that subscribers were cut off without notice even after their bills had been paid, it need only be said that if this condition exists, it constitutes inexcusable negligence on the part of the telephone utility. The utility must keep such records as will enable it to determine ac-

curately which of its subscribers have paid their bills and which are delinquent, and there appears to be no reason why such a record should not be required in this case.

With regard to the rates, no very extended analysis appears to be necessary. According to the files of the Commission, the rates of the Wausau Telephone Co. now in effect, are as follows:

Business 'phones .....	\$3.00 per month
Residence 'phones .....	1.50 " "
Party line residence 'phones .....	1.00 " "
Booths at depots & hotels .....	5 cts. per call
Extension telephones .....	50 cts. per month
Answering telephones .....	25 cts. per month
Extra line telephones .....	1.00 per month

Outside of the city limits the business and residence telephones are \$3.50 and \$3.00 per month respectively.

The report of the respondent for the year ended June 30, 1912, shows total operating revenues amounting to \$30,111.77. Operating expenses, including taxes, but not including any allowance for interest and depreciation, amount to \$16,149.05, so that the amount available for interest payments and for depreciation was only \$13,926.72. The valuation made by the Commissioner's engineering staff, as of date Oct. 1, 1912, showed the cost new of the property of the respondent to be \$288,477.00, and the present value \$184,541.00. The amount available for interest and depreciation during the year ended June 30, 1912, amounts to 6.1% of the cost new of the property, and about 7.6% of the present value. The report of the utility, although it does not comply in all respects with the requirements of the Uniform Classification of Accounts prescribed by the Commission, appears to be accurate so far as the reported total of operating revenues and operating expenses is concerned. It is evident that no general reduction of the rates can be ordered when the amount available for interest and depreciation under the present schedule is less than 8% upon the present value of the property. It is true that the rate schedule now in effect is defective in that it does not provide a rate for business telephones on party lines which is different from the rate

for business telephones on single lines. The best development of the telephone business among the smaller business users of the city would probably be obtained by putting into effect a rate for party line business telephones substantially less than the single party rate. Owing to the fact that the operating conditions of the respondent do not warrant a general reduction of rates nor a complete review of the rate schedule at the present time, it does not seem that we need prescribe a rate for party line business telephones in this case. The utility should file such a rate, but its promulgation may be left in the first instance to the utility itself, subject to review by the Railroad Commission at the time of filing.

From what has been said in connection with the points raised in this case, therefore, it appears that it is the duty of the telephone company to clear trouble at the earliest time consistent with good management of its business and that at all times the utility should undertake to have a sufficient force of competent employees to handle reports of trouble or trouble detected at the central office within a very short time after such report or detection. It is the duty of the utility also to keep an accurate record of its relations with its patrons which will show the facts with regard to the indebtedness of any patron to the utility or of the utility to any patron and that patrons should not be shut off for non-payment of bills without reasonable notice.

*It is therefore ordered,* That the respondent in this case, the Wausau Telephone Company, shall make such changes as may be necessary to enable it to furnish efficient service to its subscribers and to handle trouble reports promptly and efficiently.

*It is further ordered,* That the respondent shall keep an accurate record in permanent form of all trouble reported and detected, which report shall show (1) the time of report or detection; (2) the telephone or telephones affected; (3) the nature of the trouble; (4) the time when trouble is cleared; and (5) what action was necessary to clear the trouble. Respondent shall also keep a record in convenient form which will show the status of the financial relations existing between the respondent and each of its subscribers and no sub



scriber shall be cut off for non-payment of bills except after reasonable notice.

*It is further ordered,* That the respondent file a rate for party line business service, which rate shall be less than that charged for single party service within the city of Wausau. All other matters involved in this case, relating to rates, are for the present dismissed.

Dated at Madison, Wisconsin, this 26th day of February, 1913.

## GREAT BRITAIN.

### Court of the Railway and Canal Commission.

#### Royal Courts of Justice.

#### THE NATIONAL TELEPHONE COMPANY, LIMITED, *vs.* HIS MAJESTY'S POSTMASTER-GENERAL.

*Decided January 13, 1913.*

#### Acquisition of Telephone System by Government.

The question before the Court of the Railway and Canal Commission was the determination of the value of the property of the National Telephone Company, upon its transfer to the Postmaster-General at the expiration of the company's license on December 31, 1911.

#### Agreement of Parties—Valuation of Property—Replacement Cost.

Under the purchase agreement between the parties, dated August 8, 1905, any allowance on account of past or future profits, or any compensation because of compulsory sale was excluded from the valuation, which was to be made with regard to the suitability of the plant for the purposes of the Postmaster-General's telephonic service. In presenting the valuation to the Court the plan followed was to divide the plant into classes, and each class into sub-divisions, and then determine the value of a unit of each sub-division. The method by which the value of each unit had been computed is explained by the Court.

It was agreed that the Court must arrive at the value by two stages, first ascertaining what it would cost to construct and establish the plant in position if it did not exist, and then reducing such cost to the true value by deducting the accrued depreciation, computed with regard to the lives and ages of the several portions of the plant and their scrap value. The Court held that every expense which it is necessary to incur in order to establish the plant in position forms an item in the calculation which is to result in finding its value. During the course of the hearing the parties agreed to accept £10,239,345 as the "fundamental cost," i. e., the replacement cost of materials, labor down to gang foreman, freight, and casualty insurance. It was further agreed that some percentage addition must be made to the "fundamental cost," and that nothing had been included in that cost for certain enumerated items. It was not, however, admitted by the Postmaster-General that anything was due in respect of any of these items.

This agreement of the parties left for the determination of the Court the questions (1) of the percentages which should properly be added to

the "fundamental cost," and (2) of the depreciation to which the entire cost of construction, when ascertained, should be subjected.

### Overhead Percentages.

Proceeding to the determination of the first question, the Court held that the percentage additions to be made were entirely questions of fact and not of law, and involved the determination of whether any alleged item of expense was a necessary step in the construction and establishment of the plant, and, if so, what amount should properly be added in respect thereof; and that the problem was largely one of business experience and the computation in each case must be made with due regard to the allowance made for other items in the calculation.

Overhead allowances were claimed for the cost of raising capital; the cost of obtaining subscribers' agreements; ordering and storing materials; obtaining wayleaves; local engineering; district and local administration; head office engineering and administration; contractor's profits; rents, wayleave payments; maintenance and insurance during construction; interest during construction; and contingencies. The Company's claims for these items totalled £8,292,750, amounting to 75.9 per cent. of the "fundamental cost." The Postmaster-General disputed the claim that anything was due in respect of some items, but allowed altogether £1,817,561, which was 17.76 per cent. of the "fundamental cost," leaving a difference between the two sums of £6,475,189. The Company assumed that a hypothetical constructor would put up the plant himself, as the Company had in fact done in constructing about nine-tenths of its system. The estimate of the Postmaster-General, on the other hand, was based upon the supposition that the constructor would employ a contractor to erect the plant.

### Company's Claims.

The Company claimed that the method by which it had built up its system was the most economical method of construction, and that it was therefore bound to estimate the cost of reconstruction upon this basis, inasmuch as cheaper and more efficient results were obtainable and had been obtained in this way than by the employment of contractors. The Company took a period of time alleged to be typical and by distributing its total expenses incurred for the particular item of overhead expense during this period, between maintenance and construction in proportion to the time devoted to each by its employees, obtained the ratio which the cost of the item bore to the cost of construction work executed during the period. This percentage it sought to apply to each class of plant. The Court objected to the Company's method of computation upon the grounds that the typical period adopted was one during which less construction work was done than in previous years, which tended to increase the proportion of general charges to construction; that this method involved a comparison of construction by the company with construction by a hypothetical contractor, in other words, the comparison of piece-meal construction with continuous construction; and finally, that the company introduced its percentage additions into the calculation at different stages, thus magnifying any error

which might have crept into an earlier percentage by the subsequent percentage upon such error.

### **Postmaster-General's Estimate.**

The Postmaster-General treated the problem rather from the point of view of an ordinary engineering contract, and maintained that to the agreed "fundamental cost" must be added (1) a sum for contractor's supervision and administration amounting to 26.5 per cent. on the agreed amount for labor down to gang foreman; (2) 10 per cent. on the contract price for contractor's profit; (3) the cost of obtaining way-leaves; and (4) 5 per cent. on the contract price for engineering and supervision or "employer's burden." The Court held that the Postmaster-General's estimate contained obvious omissions and miscalculations; that instead of being founded upon the firm foothold of experience, it was based upon contractors' so-called "tenders"; and that, although this method of approaching the question would be entirely sound if contractors with experience in executing similar contracts could be found, it would be a perfectly unique experience to provide the telephonic plant of this Company.

### **Attitude of Court toward Overhead Percentages.**

With respect to basing the percentages upon the cost of labor alone, or upon the hypothesis that the amount of an overhead item varies in direct proportion with the cost of the thing to which it is applied, the Court held that when a costly plant is being put into position, and the labor, though skilled in quality is small in amount, it would seem preferable to take the ratio for all items with reference to both labor and materials or plant cost. The amount of the percentages is essentially a question of fact in determining which one must be guided by experience and a sense of business touch. The Court found itself unable to accept the percentages submitted by the Postmaster-General. It held that, although the Company's percentages must be reduced, its method of computation was satisfactory in that it was based upon actual experience, and the best guide to what the plant would cost was what it had cost. The Court made substantial reductions in the amounts submitted by the Company.

### **Contingencies—Separate Establishment.**

In dealing with the specific items composing the overhead percentage, the Court refused to make any allowance whatever for "contingencies" upon the ground that the Company's calculations were based upon actual cost, and all the factors of cost were consequently ascertained and provided for; moreover, the inventory of the property had been checked by both parties and the particulars and quantities ascertained and agreed upon. In view of the fact that the economies accruing from the Company's combination of a construction business with an operating business were fairly balanced by the extra cost arising from piecemeal construction, no allowance was made by the Court for the "separate establishment" charges claimed by the Company as representing the advantage accruing to the construction account as a result of these economies.

**Cost of Obtaining Subscribers' Agreements—Cost of Raising Capital.**

The Court made allowances, among others, for the "cost of obtaining subscribers' agreements," and for the cost of raising the necessary capital, the propriety of any allowance for either of which was disputed by the Postmaster-General. With respect to the "cost of obtaining subscribers' agreements" the Court held that the bare cost of obtaining the agreement and thereby securing a station in the subscriber's house, was not excluded by the clause of the purchase agreement depriving the Company of any allowance for past or future profits, which was intended to preclude any allowance for the good will of the business. Inasmuch as it would not be practicable to carry out the process of construction without an agreement in the first instance, these agreements belong in a like category to wayleave agreements, and a substantial sum should be allowed in this respect as part of the construction cost. With respect to the cost of raising the necessary capital the Court held that, inasmuch as money cannot be procured for nothing, it makes no difference whether the Company does the work itself or does it by means of a contractor. One or the other is put to the expense of raising the money and every necessary cost must appear in value or no sane person would ever knowingly contract. The cost to be considered is the cost to the hypothetical contractor, who is a person of good credit. Every expense which is necessary in order to construct is an element to be considered. It is necessary either to refuse to follow the formula approved by the House of Lords and agreed to by the parties, or to find as a fact that money can be procured for nothing.\*

**Contractor's Profits.**

With respect to the allowance for "contractor's profits," the Court held that any such allowance was inconsistent with the idea of an employer constructing his own plant, and that the economy which was so strongly urged by the Company as accruing from doing the work itself instead of resorting to contractors, would largely disappear if an allowance were made for contractor's profits never paid out. In so far as contractors had been employed the Court made a reasonable allowance for this item.

**Interest during Construction.**

For "interest during construction" one year's interest was considered a fair allowance upon the basis of a period of construction extending over two years.

**Accrued Depreciation—Present Value.**

Turning to the second question, that of the amount to be deducted for depreciation, the Court held that this question must be determined with regard to the life of the various portions of the plant, their ages at the date of transfer, their condition at that date, and their residual or scrap value.

\*Sir James Woodhouse expressed a dissenting view to the effect that no allowance whatever should be made for the "cost of raising capital."

### **Straight Line and Sinking Fund Methods.**

As between the sinking fund and straight line methods of computing the accrued depreciation, the Court approved the straight line method. The Postmaster-General contended that the straight line method should be applied in determining the present value of the property on the ground that the replacement value should be reduced in the ratio which the age bears to the life of the plant. The Company urged that the sinking fund method should be adopted, and that the value of the plant at any moment should be determined by deducting the amount in the sinking fund at that time from the replacement cost. The Court held that the sinking fund method was wholly inapplicable to a case between buyer and seller inasmuch as it was based upon speculative assumptions as to the future life and income of the plant, and, further, the value of the plant, if ascertained in this fashion, would be much greater in the earlier years of its life than in the later years by reason of the increasing rate of growth of the fund. It might be perfectly legitimate to adopt the sinking fund method of calculation for the purposes of a going concern, as in estimating the value of an item of plant before deciding whether or not to scrap it and substitute newer or more powerful plant.

### **Life of Plant.**

With respect to the mode of computing the life of the plant, the Court agreed with the Company's contention that the physical life should be taken, and held that the physical life is the period during which the plant, if properly maintained, will continue to render efficient service. The Postmaster-General contended for a shorter life, called the "effective life," reached by taking into consideration the probable growth of the business, the probability of the substitution of improved types of plant, and the defects in particular items of plant. The Court held that to give weight to other considerations than the time during which the plant would continue properly to perform service involved a confusion of thought, and that the possible, and even probable, growth of the Postmaster-General's telephonic business had no bearing upon the present value of the Company's plant, but that in default of any more satisfactory method of dealing with defects and obsolescence, the physical life must be reduced somewhat in reaching the conclusion.

### **Suitability for Postmaster-General's Telephonic Service.**

With respect to the construction of the provision that the valuation should be made with regard to the suitability of the plant for the Postmaster-General's telephonic service, the Court held that suitability can have reference only to the fitness or condition of the plant, and that the provision cannot properly be construed to change the ordinary method of determining the accrued depreciation. The service of the Postmaster-General at the time of taking over the plant consisted in affording telephonic communication between the then subscribers of the combined systems, and it is the degree of suitability of the then existing plant for such service which ought to receive and will receive due consideration. To test the value and suitability by reference to a

different time and a different body of subscribers is not consistent with the words of the agreement nor with the ordinary principles of justice.

#### Valuation of Property—Conflicting Claims.

The Company claimed for the replacement cost of the plant £18,010,427. It deducted for depreciation £2,237,256, and added £521,668 for obtaining subscribers' agreements, thus reaching a present value of £16,294,839. The Postmaster-General estimated the replacement cost at £12,056,906, and deducting for depreciation £4,731,326, obtained a present value of £7,325,580. The difference between the estimates of present value amounted to £8,969,259.

#### Judgment.

By adding its allowance for overhead percentages to the "fundamental cost" agreed upon, the Court determined the replacement cost to be £13,451,016. From this it deducted £2,997,220 for depreciation. A further sum of £2,055,468 agreed upon between the parties as covering land and buildings and various other items, was added, and judgment was given for £12,515,264. This sum represented the replacement cost depreciated upon the straight line method by reference to the physical life somewhat reduced.\*

#### BEFORE

MR. JUSTICE A. T. LAWRENCE, THE HON. A. E. GATHORNE-HARDY, AND SIR JAMES WOODHOUSE.

*Sir Alfred Cripps, K. C., Mr. Danckwerts, K. C., Mr. Forbes Lankester, K. C., Mr. Morten, K. C., Mr. H. H. Gaine, and Mr. Aubrey T. Lawrence (instructed by Mr. William E. Hart), for the Applicants.*

*The Attorney-General (The Right Hon. Sir Rufus Isaacs, K. C.), The Solicitor-General (The Right Hon. Sir John Simon, K. C.), Mr. Buckmaster, K. C., Mr. W. G. S. Schwabe, and Mr. Branson (instructed by Sir Robert Hunter), for The Postmaster-General.*

#### JUDGMENT.

MR. JUSTICE A. T. LAWRENCE:

This case becomes before us pursuant to a statute, the IX. of Edward VII., chapter 20, passed in 1909, and to an agreement of the parties made thereunder. The effect of these

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\*Editor's headnote.

documents is that this Court has to determine, in accordance with a purchase agreement dated the 8th of August, 1905, the value of the property of the National Telephone Company upon its transfer to the Postmaster-General at the expiration of the Company's license. The license expired on the 31st of December, 1911. The Act directs that all proceedings shall be conducted in the same manner as other proceedings in this Court. Though proceedings in this Court often take some time to investigate, we trust this case will not become a precedent for their duration. In extenuation of the time consumed, it must be remembered that the property involved is large, extending over a great part of England, Scotland, and Ireland, that it is of great variety, and it is so numerous that the agreed inventory or list containing it is so bulky that it has not been found possible to bring it into Court. The Company was the pioneer in the introduction of the telephone into this country, and had a system at the time of the transfer serving 561,356 stations.

The total amount claimed was £20,924,700.

At the outset the parties agreed to deal first with heading I. of the Particulars which comprises, speaking generally, the plant of the undertaking. The governing clause of the purchase agreement is numbered 4 (1) and is in these words: "4. (1) The value on the 31st day of December, 1911, of all plant, land, buildings, stores, and furniture purchased by the Postmaster-General in pursuance of the provisions hereof shall be the then value (exclusive of any allowance for past or future profits of the undertaking or any compensation for compulsory sale or other consideration whatever) of such plant, land, buildings, stores, and furniture, having regard to its suitability for the purposes of the Postmaster-General's telephonic service, and in determining the value of any plant no advantage arising from the construction of such plant by leave of the Postmaster-General upon any railway or canal over which the Postmaster-General possesses exclusive rights of way for telegraphic lines shall be taken into account." This clause reproduces with but slight modification section 43 of the Tramways Act, 1870.



The method adopted of presenting the matter to the Court was to divide the plant into classes, such as "underground" and "overhead," to divide each class into sub-divisions, and then to value a unit of each sub-division, *e. g.*, a mile of conduit, or a mile of bare wire, or a pole. The value of the unit, when ascertained, could then be multiplied by the number of such units in the inventory. The valuation of the unit proceeded in this way: it assessed first the price of the material, then the cost of its transport to the site, and then the cost of the labor of placing it in position, up to and including the "gang foreman"; this was called the "plant cost." To this was added, by means of percentages, the cost of every additional item of expense to which it was alleged that a constructor of the system would be put in the matter. The Company based its case upon its own experience. For materials it took the average price paid for a period of 12 years, and for labor the average cost for six years. After the case had proceeded for some time, it became apparent that the chief conflict between the parties would turn upon the percentages to be added to the plant cost; the difference in view as to plant cost was never very great, and the parties wisely came to an agreement upon the figure. The result of this agreement was to relieve the Court from the necessity of determining the plant cost of this property *in situ*. The agreed sum, together with an agreed item for casualty insurance, became the "fundamental cost," and was agreed at the sum of £10,313,765. It left over for the consideration of the Court the highly controversial questions (A) of the percentages which should properly be added to this sum, and (B) the depreciation to which the whole cost of construction, when ascertained, should be subjected.

It was agreed that, in cases of this character, the true method of ascertaining value is to consider what it would cost to construct and establish the plant in position, if it did not now exist, and then to depreciate such cost according to the age of its respective parts. This is assessing value on what are called tramway terms. It could, I think, be demonstrated that it is the only possible mode of arriving at the 'air value, in cases where there is no buyer but one, and

that one must have such plant *in situ*, while the present owner has no further right to work it.

It is unnecessary for me to undertake the demonstration, because it has been decided, in cases which have gone to the House of Lords, to be the right method to adopt in tramway cases. The words of the Tramway Acts are reproduced in clause 4 of the purchase agreement, with one modification. That clause contains the further words "having regard to its suitability for the purposes of the Postmaster-General's telephonic service."

Each side relied upon those words in support of certain of its arguments, but neither contended that they had the effect of changing the method of valuation above mentioned. In applying this method, it is clear that every expense which it is necessary to incur in order to establish the plant in position forms an item in the calculation which is to result in finding its value. The plant is assumed not to be in existence, in order that its presence may neither, on the one hand, obstruct, nor, on the other, assist the hypothetical constructor. Telephonic plant enables any two subscribers to communicate with one another by means of instruments attached to their premises. They are put into communication with one another by operators at the exchanges. Investigations, inquiries, and obtaining consents, from the subscribers, are necessary preliminaries to erection—as also are wayleave grants or licenses to a body having no statutory power to lay its wires on highways or the private property of third persons. Both parties agreed that some percentage addition must be made to the agreed fundamental cost; they further agreed that nothing had been included in the above sum for the following matters alleged by the Company to be necessary items of expense:

1. Ordering and storing material other than certain temporary storage.
2. Obtaining wayleaves.
3. Local engineering supervision.
4. Local administrative or district supervision.
5. Head office engineering.
6. Head office administration.

7. Contractor's profits (as distinguished from manufacturer's profits).
8. Rent of premises for erection of exchange equipment—wayleave payments—maintenance and insurance of plant until it becomes revenue earning.
9. Contingencies, except so far as covered by columns A and C of the agreement.
10. Interest during construction.
11. Cost of raising capital.

A further head of claim, *viz.*, "Obtaining subscribers' agreements" was not mentioned in the document. But, as the Postmaster-General does not by the agreement admit, as a fact, that anything is due in respect of any of the 11 heads—he merely admits that nothing has been included in the fundamental cost in respect of either of those matters)—the fact that this 12th head of Claim is not mentioned does not seem to be important. Here the agreement of the parties terminated, and a wide divergence of view was presented. It was unfortunate that this agreement should not have been come to until after the 35th Day of the hearing, for our minds and the evidence had, during that period, been largely concentrated upon the cost of materials, the cost of freight, the cost of tools, and of labor. The evidence on these topics has now become, to a large extent, immaterial, and the crucial points now in dispute have to be picked out from the mass of this evidence. However, we must be thankful that the case has been, to some extent, shortened and simplified by this agreement. The percentage additions to be made appear to us to be entirely questions of fact and not of law. In each case the question has to be asked, Is this alleged item of expense a necessary step in the construction and establishment of this piece of plant? If so, what is the true amount to be added in respect thereof? These are pure questions of fact, and we have in no case added anything without having first asked ourselves and answered these questions. In this view this long exposition of our award is unnecessary, but the Attorney-General and the Solicitor-General have pressed for the delivery of "a reasoned Judgment,"

and we are anxious not to arrogate to ourselves any finality that is not imposed upon us by the law.

The second question is, from the nature of the case, largely one of business experience. The computation has, in each case, to be made with due regard to the allowance made for other items in the calculation, and, probably, no two minds would, independently, arrive, by identical routes, at the same final figure. The Company's case upon the percentages was shaped in this way: they professed to take their own actual experience of what it had cost them to perform the service, and asked us to infer that, as they had been well and economically managed, and quite as successful as the Postmaster-General in his telephonic service, it would cost him or anyone else at least as much. The Postmaster-General, on the other hand, asked us to accept the view that a contractor would do the work for a percentage of 20 per cent. on the cost of labor alone, plus a profit of 10 per cent. To this he added 5 per cent. for the services of the engineer. The Company purported to get at what it had cost them by taking a period of time alleged to be typical, and by investigating this period and distributing their total expenses, for the particular service during this period, between maintenance and construction in proportion to the time devoted to each by their employees. This gave the ratio which the cost of the service bore to the cost of construction work executed during the period, in the form of a percentage; this percentage they sought to add to each class of plant. The Solicitor-General contested every point in the process, and some of his criticisms were certainly very cogent.

It is plain that a percentage of cost of any service obtained in this way is open to many errors, no matter how well-intentioned the conduct of the investigation may have been. The investigation was made under the direction and superintendence of Mr. Gill, the engineer-in-chief of the Company. His evidence was as remarkable for the care and ability he had brought to bear on the inquiry as it was for his fairness and candor in the witness-box. Notwithstanding this, his results are not completely satisfactory. This is due chiefly to the fact that the typical period was one during which con-

struction was less than it had been in previous years, for the Company was then beginning to approach the termination of its license, whereas the staff was not materially diminished. This tended to increase the ratio which general charges bore to construction. Again, the allotment of time to maintenance and construction, respectively, was made by his subordinates from their memories of what had happened in preceding months, a method manifestly open to error.

Then this method involved a comparison of construction by the Company with construction by a hypothetical constructor, that is, comparing piece-meal construction with continuous construction. This was a favorite subject of attack by the Solicitor-General. I think he attributed too much weight to it. In the two matters of preparing estimates and "ordering" materials, it did not undoubtedly increase the expense. In other respects I do not think it did, though, of course, it afforded an opportunity for possible error in the apportionment of time between construction and maintenance. This objection to the Company's experience is incapable of exact measurement, and in that respect it resembles a claim put forward by the Company to an additional allowance called separate establishment charge. No doubt there would be some saving in the fact that the Company had regular work for its staff in ordinary maintenance. It could use this staff and all its facilities for construction whenever it was most convenient to do so. This would be cheaper than providing specially for each piece of construction. It is impossible to gauge with any degree of precision. I have come to the conclusion that any increased cost by reason of "piece-meal construction" may very well be set against the claim for "separate establishment" allowances, as was suggested by Mr. Gathorne-Hardy in the course of the case. It does not profess to be an exact equivalent, but it is probably so nearly one that each side will think it has been hardly used by this treatment. Again, in arriving at the cost of "storing", it became clear that Mr. Gill had not been well served by his local subordinates, who prepared the returns upon which he based his calculation. These gentlemen had not fathomed the true meaning of

their instructions, and had, in consequence, unduly increased the expense of storage. Again, Mr. Gill introduced his percentage additions into the calculation at different stages; this the Solicitor-General named the "snowball" fallacy.

It is clear that, in this way, any error which might have crept into an earlier percentage would be magnified by the subsequent percentage upon such error. The hypothesis which justifies the use of the percentage method seems to me to be that the cost of the service varies in direct proportion with the cost of the thing to which it is applied. Experience can alone tell one whether it does so vary, and this method introduces an unnecessary element of complexity. I should have felt greater confidence in the calculations of both parties if the cost of all services had been taken at the ratio which their cost bore to labor and materials or plant cost. This would have been simpler; it would have avoided many possible errors, and it would have enabled men of experience to judge more easily the correctness or otherwise of the percentage. More than one witness of experience expressed this view.

The foregoing considerations make me feel that Mr. Gill's percentages must be reduced. His method, when they are properly reduced, is satisfactory, in that it is based on actual experience. The Postmaster-General's evidence, on the other hand, is not so satisfactory. It is true that his leading witness, Mr. Snell, did not compare unfavorably with Mr. Gill, but he had been cramped by his instructions, and, instead of being provided with the firm foothold of experience, of which the Post Office authorities had had ample, if they had chosen to use it, he was supplied with contractors' so-called "tenders."

The method of approaching this question by asking what would a contractor do the work for is perfectly sound if you have contractors who have experience of executing similar contracts, and who are prepared to think the whole matter out, and justify their estimates by reference to their experience. To provide the telephonic plant of this Company would be a perfectly unique experience. No contractor called before us had had any experience extending beyond

mere fragments of similar work. None of those called before us succeeded in convincing me that he had given anything like adequate consideration to the matter in hand. Most of them had a rooted objection to producing the figures resulting from carrying out any contract which he had executed. They based their objection upon the wish not to "disclose their business," but, inasmuch as they professed to be telling us the results of their experience, how they prepared their estimates, including even their profits, I do not understand this delicacy, for, if their evidence was correct, the figures could have given no further information, and could have disclosed no business secret.

If the figures, on the other hand, would not bear out the evidence, reluctance to produce them becomes intelligible. In simple work, like digging a trench, I can understand that the cost of these charges would vary pretty regularly with the cost of labor alone, but when costly plant is being put into position, and when the labor, though skilled in quality, is small in amount, the evidence given by two or three witnesses, that they prefer to take the ratio to labor and materials, seems to me far sounder. The percentage which the contractors who were called for the Post Office spoke to was a percentage of about 20 per cent. on labor alone. This, it was said, was sufficient to cover every charge, and would leave to be added only 10 per cent. for contractor's profit, and 5 per cent. for engineering, or, as it was subsequently called, "employer's burden." This 20 per cent. appears to have been deduced, first, from an investigation in the North Wales district during 11 months of 1907-1908. This was the only instance of the Post Office experience laid before us by the Postmaster-General. It was explained that it was chosen because the Post Office happened to have details of cost for those months, as they had been made in consequence of an "outcry" in the Department against the cost of "estimating" in that district. I do not think an investigation of this sort and in this district at all a safe guide to apply to the Company's whole system, much of which is in London and other populous places.

I am confirmed in this opinion by the consideration of a

document, "W. S., 18," purporting to show the important character of the work under construction during the period; this turned out, upon investigation of the "Works Orders," to be a most misleading document, one that, with ordinary care, should not have been laid before us. Again, the percentages obtained from this North Wales district were obtained by ignoring the services of (A) the head office staffs, both of engineering and administration; (B) the office and office staff of the district engineer; (C) the stores of the inspectors throughout the district. No real justification of this was ever presented to us. The inadequacy of this percentage was apparent in the case of cables laid by the Post Office for the Company at Chester on the terms that the Company should pay a rent of  $6\frac{1}{2}$  per cent. upon the cost of the work. Upon examination, it was proved that this rent showed a cost of 33 per cent. above that which the Post Office was now asking us to allow to the Company for similar plant. Many explanations of this discrepancy were attempted, but none were satisfactory to my mind.

I am unable to adopt the percentages put forward by the Post Office, and I am driven, in these circumstances, to frame other percentages. In doing so, I have endeavored to give due weight to, and to be guided by, the evidence given throughout this long case. The amount of these percentages is essentially a question of fact in which one must be guided by experience and a sense of business touch. I have given anxious thought to the matter and have come to conclusions by means of which I have determined the amount due. Before I state that amount it is desirable that I should deal with those heads of claims in respect of which the Postmaster-General contended that no percentage allowance should be made. The cost of obtaining subscribers' agreements is an item which has been disputed by the Postmaster-General, not only as to amount but also as to its being an admissible element of cost. I confess I have been very much surprised at this, not merely because it seems to me to be within the principle of the case allowing the expenses of obtaining Parliamentary powers for a tramway, but also because it is plain that the Postmaster-General has treated



the transfer of the Company's system as having the effect of an assignment, by operation of law, of these very agreements. So that he takes up these inconsistent positions: As between himself and the Company's subscribers, he takes all the benefits conferred by the agreements upon the Company; but, as between himself and the Company, he says, I claim to be entitled to refuse to pay you anything in respect of the expense to which you have been put in obtaining and entering into these agreements.

This does not seem to be right, and it would follow from it that an instrument in a house vacant at midnight on December the 31st, 1911, was as valuable and as suitable to the service of the Postmaster-General as one in a house the agreement for which continued and poured its tariff, or rent, into his coffers without any interruption. It seems to me that the reasonable cost of obtaining this agreement is the very lowest measure of the difference in the value of these two instruments. It is the difference between the barren and the fruitful, which is familiar in many cases. It is quite true that clause 4 expressly deprives the Company of any allowance for past or future profits, so that the value of the good will of the agreement cannot be given, but how this can be construed to exclude the bare cost of getting the agreement and of thereby securing a station in the subscriber's house, I fail to understand. The instruments and their connections would constitute trespasses but for the fact that they were erected pursuant to these agreements. The consent of the subscriber embodied in the agreement was as necessary in order to make the erection of the instrument a lawful act as the Parliamentary powers were in order to legalize the breaking-up the surface of the highway for the purposes of a tramway. I am not now dealing with the *quantum* of cost. The evidence upon that subject is scanty, and I think it is to be inferred from it that other expenses have been included in the Claim beyond those which can be properly attributed to the obtaining of the agreements in force for the instruments *in situ* at the date of the transfer. Sir Alfred Cripps felt this, and suggested that we should allow one-half the amount claimed. We

must reduce this Claim, and we have done so. The amount we allow, after depreciation, stands, in round figures, at £150,000.

Next, it is said that the cost of raising the capital necessary to construct the plant is not an item to be taken into account in finding the cost of its construction. This does not mean the cost of raising the price to be paid by the Postmaster-General under this award. It means the cost to which anyone must be put who attempts to construct this plant. The method prescribed by the House of Lords for ascertaining value is to consider what it would cost to construct the plant, that is, would, as a fact, cost.

The first question, then, is, would it, in fact, cost anything to provide the necessary capital? The Company have given evidence, by way of example, that it cost them 4.41 per cent. to raise  $5\frac{1}{2}$  million pounds. No one has given evidence that it would not cost anything, nor has that proposition been put forward even in argument. I know of no commodity and no service that can be procured as of right for nothing. I am clear that, as a fact, money cannot be procured for nothing. It was further argued that this item of cost was to be attributed or charged to the business and not to the plant. In so far as this argument excludes the cost of raising any capital other than that required in order to construct the plant, I agree with it. We have nothing to do with the cost of raising any capital other than the amount which would be necessary in order to construct. If the argument means that even this part of the capital raised should be attributed to the business and not to the plant, I am unable to follow it. It seems to be founded upon some conventions of bookkeeping, proper in their own sphere, but which have no relation to the problem under consideration, *viz.*, what would it cost to construct the plant? The cost of getting the money to pay for the materials, labor, etc., has no nearer connection with the "business" than the materials and labor themselves.

It has been said that it cannot be an element adding to the value of the plant. The thing transferred here is the plant *in situ*, and the cost of construction, less depreciation,

is the method by which the value has to be ascertained. It follows that every expense which is necessary in order to construct is an element to be considered, and it has to be considered because it is necessary in the process of construction. The thing to be transferred, say a pole, must be procured, transported, and erected; each of these steps is necessary to the existence of the pole *in situ*; each of these steps costs money, and raising this money is itself an expense and is one as necessary to the existence of the pole as any of the other steps.

This is clear even in the case of one pole, but, when the money required amounts to millions, it becomes clearer, for no one has millions of pounds in his pocket, or even, I suppose, on current account at his bankers. The result of this is that this cost stands out and is seen clearly. It has not become merged in less conspicuous matters, as it may do in illustrations like motor cars and pianos put to us by the Solicitor-General. The price of these, as of all things in which there is competition, is governed by the market price, but even this, if the market is to be stable and sound, must cover all the items of expense necessary to production. It is not true to say that this involves the proposition that the value of plant varies with the credit of the constructor. The cost to be considered is the cost to the hypothetical constructor who is a person in good credit; or, in other words, what it must cost any constructor, even the Postmaster-General, who has the credit of the State on which to raise the necessary capital.

Again, this does not involve the conclusion that the cost of raising capital should be added to the price again if the property should be transferred a second or a third time; it is an item of value once and once only, namely, on the construction of the plant, and it is merely because it is necessary in order to construct that this item comes into the calculation at all. That it must be included is apparent, if it is tested in a case in which the sale takes place immediately upon the completion of the construction.

Assume the plant to cost £10,000,000 to construct, out of which £300,000 has been properly and necessarily spent

in raising the capital required to pay for its construction. If the constructor were to receive the cost less this £300,000, he would get £8,700,000 only and would lose £300,000 by the transaction. It makes no difference whether the constructor does the work himself or does it by means of a contractor. Whoever raises the money necessary to pay for the materials, labor, etc., etc., is put to the expense of raising that money. Every necessary cost must appear in value, otherwise no sane person would ever knowingly construct; for, if it does not appear in value, it must result in loss, and to say it should be relegated to loss is to deny the principle upon which we are agreed, that value should be ascertained by finding what it would cost to construct the plant. Unless, then, it can be affirmed that money, unlike other commodities, can be procured without expense, it is clear that this item must be included at its proper amount. In other words, we must either refuse to follow the formula approved by the House of Lords and agreed to by the parties; or find, as a fact, that money can be procured for nothing. I am not able to adopt either of these alternatives. I think a reasonable amount must be allowed under this head of Claim. I have cut this item down to a low figure, and the amount stands, after depreciation, at the sum of £247,189.

I come now to deal with the question of depreciation. It is admitted that the figure for construction cost has to be depreciated in view of the fact that the plant was not new at the moment of transfer, but was of varying ages. Two methods of depreciation have been put before us and two different ways of regarding the life of plant. The two methods have been described as the sinking-fund method, which has been put forward by the Company, and the straight-line method, which has been put forward by the Postmaster-General.

The sinking-fund method is based upon the effect of compound interest; it takes the life of the plant and then ascertains the sum which, paid into a sinking fund at compound interest, would replace the cost at the end of the life, and it is suggested that if the amount in the sinking fund in any year of the life be deducted from the cost of the plant,

the remainder will give you the value of the plant at that moment.

I do not go into the rate of interest; it seems to be unnecessary for my purpose; it is evident that, whatever the rate of interest, the value of plant ascertained by this method will be much greater in the earlier years of its life than in the later years by reason of the increasing rate of growth of the fund due to the fact that it is accumulating at compound interest. This method may be, and I think is, a proper method to adopt in a going concern, especially where revenue is largely used for capital purposes. In such a case it may be perfectly legitimate, in estimating the value of plant before deciding whether to scrap it and substitute newer or more powerful plant, to adopt this method of calculation in order to see whether it is economical, or even profitable, to scrap the old plant. This seems to me to be a purely revenue question and to have nothing to do directly with the value of the plant as between a vendor and a vendee. It was admitted by the very eminent witnesses called for the Company upon this point that this method had never, in their experience, been applied as between a buyer and a seller. I admit this method will give you a perfectly correct arithmetical result, but it does not take into consideration those matters which properly affect the mind of a buyer. The prudent buyer discounts every risk. The past has happened and is certain; the future is not. It is true that we have no cautious buyer to deal with here, but we have no right to take chances that he would not. We can no more look into the future and determine its events by arithmetic than he could. It may have a thousand vicissitudes beyond our ken, and we are bound to have regard to the fact that we are engaged in a valuation between a buyer and a seller. I come to the conclusion therefore, that the Postmaster-General's method of depreciation, which is the ordinary or straight-line method, is that which should be applied. In this method the value is reduced in the ratio which the age bears to the life of the plant.

The next point in dispute between the parties upon this subject is the mode of computing the life of the plant. The

Company adopts the physical life; the Postmaster-General rejects this and adopts a life which, in the course of this case, has received a great variety of names. It is a shorter life than the physical, and his witnesses have reduced the physical life upon a variety of different grounds in order to arrive at it. These divide themselves into three main classes: first, the probable growth of his business; second, the probability of its becoming desirable to substitute improved types of plant for that which exists; thirdly, defects in particular pieces of plant.

The Company's system includes a great variety of plant composed of quite different kinds of materials. It is only possible to arrive at the depreciation due to time and use of these things by dividing them into classes, each containing things composed of substantially the same materials and having the same general tendency to wear or decay. This seems to me to be the fundamental idea upon which the value of a thing is depreciated in proportion to the time it has been in use. For the purposes of the operation the plant is proved or assumed to have been properly maintained and to be in a proper condition to perform its particular service. Its physical life is the period during which it would, if so maintained, continue to perform that service. Its age is the period during which it has already performed that service for the vendor. It is the relation of age to life which justifies the application of the straight-line method of depreciating the cost of the article. To apply to this calculation other considerations than that of the time during which the plant would continue properly to perform its service seems to me not to be permissible; it involves a confusion of thought. The possible, and even probable, growth of the Postmaster-General's telephonic business has no bearing upon the present value of a piece of the Company's plant. It is a consideration which runs right athwart the established mode of estimating value, namely, by considering what it would cost the Postmaster-General to erect that very piece of plant less depreciation for the user by the Company.

The measure of the probable expansion of the Postmaster-General's business was also unsatisfactory. It was assumed

that it would expand to the same extent and at the same rate as the Company's business had expanded in the past; this assumption was not supported by any evidence other than that of hope and expectation.

The second ground, namely, that of the probability of improved types of plant being substituted, is open to the same kind of objections as I have mentioned above; it is equally uncertain and equally unsuited to the purpose to which it is applied.

The third ground, that of defects of particular plant, violates the assumption upon which the calculation commences. It is quite plain, and is admitted, that an allowance for all proved defects must be made, but it does not come properly into this question of life unless the defective plant is first put into a class of its own. Thus, some cement blocks were proved to be defective, and an allowance will have to be made for these, but that does not seem to me a good reason for adopting, as the basis of the whole calculation, not the physical life of this plant, but the so-called "proper" or "effective" life.

The Solicitor-General relied in his summing up upon the words in clause 4 to the effect that the value was to be taken on the 31st December, 1911, "having regard to its suitability for the Postmaster-General's telephonic service." I have no doubt that full force and effect must be given to those words, and I propose to give it in dealing with plant shown to be defective, as also with plant proved to be obsolescent on that date, as was the case with regard to some exchange equipment. I do not think these words can properly be made to change the ordinary method of depreciating plant. The witnesses for the Postmaster-General, in this and other respects, seemed to aim at "getting the best of both Worlds", while they, quite properly, excluded business considerations in augmenting the value of the plant, they improperly, as I think, sought to depreciate its value by having regard to its suitability not for the service of the Postmaster-General on the 31st December, 1911, but to some other and different service, namely, his contemplated service at some indeterminate future period.

What was the service of the Postmaster-General when he took over this plant? It was the affording the means of telephonic communication between the then subscribers to the combined systems. It is quite possible that some of the then existing plant might have varying degrees of suitability to that service, and evidence which showed that ought to receive, and would receive, due consideration. To test its value and suitability by reference to a different time and a different body of subscribers seems to me neither consistent with the words of the clause, nor with the method of valuation in which we are engaged, nor with ordinary principles of justice. In these circumstances, we find ourselves in this position, the general evidence given by the Company of the good condition of the plant is met by some instances of defects in particular classes of plant. We are satisfied that defects exist, but we have no evidence gauging the effect which ought to be given to these defects. The Post Office witnesses have not discriminated between the effects of their several causes for shortening physical life; they lump them all together. They have given no evidence from which it can be reasonably inferred that their estimate of growth is correct; they take the growth of the Company in the past as their measure. No ground whatever is given for this, there must be a limit to the capacity of every community to provide subscribers. I am not satisfied that there will be any large expansion of the combined systems unless rates are lowered, or the service is improved. In that event the increase might become enormous. I do not consider that a ground for depreciating the value of existing plant. On the other hand, though I think it is a very unsatisfactory method of dealing with the defects and obsolescence of certain of the plant, I have, in default of any other method, been driven to reduce somewhat the physical life I should have otherwise given to several classes of the plant. In this way I have allowed for the "withdrawal of wayleaves," "defective spare conduits in cement blocks," "defective spare wire," "overloaded poles," and "increased cost of maintenance of poles and struts in the later years of life," "absence of bonding at manholes," and "obsolete exchange plant and



subscribers' instruments." I have then depreciated the value upon the straight-line method by reference to the physical life so reduced.

The result at which I arrive is this. I find that the construction value of the plant under headings I., II., III. and IV. of the Particulars of Claim is £13,457,016, and that the depreciated value of this plant is £10,459,796. To this sum is to be added the amount agreed by the Attorney-General and Sir Alfred Cripps as the value of heads V. to XII. of the Particulars, *viz.*, the sum of £2,055,468. Together, these sums amount to £12,515,264, for which sum judgment must be entered for the Company.

It would be superfluous, if not presumptuous, to compliment the learned Counsel engaged in this case upon the ability shown throughout by juniors as well as leaders; but I think I may fitly express our appreciation of the unfailing courtesy with which our interpositions have been received, the conspicuous fairness with which the witnesses were treated, and the good humor and candor shown by Counsel towards one another. These are no light matters in a case involving such a prolonged struggle over complicated details. In conclusion, I must say we are profoundly grateful to the Attorney-General and Sir Alfred Cripps for their settlement of the compensation cases and the other matters which were outstanding for our determination.

MR. GATHORNE-HARDY:

I have had ample opportunities of considering the Judgment just delivered, and as I entirely agree both with the conclusions arrived at and with the arguments on which they are based, I consider it would be superfluous and undesirable to deliver a reasoned Judgment of my own. The figures have been arrived at after long and careful consultations.

As there is, unfortunately, a difference of opinion between my colleagues on the question of the cost of raising capital, I add that I agree with the learned Judge that it is a proper element to be taken into consideration in determining the value of the plant by estimating what it would and did cost to produce. It was proved as a fact by the evidence that

the Telephone Company did actually incur considerable expense under this head, nor do I think it would have been possible for anyone to have constructed the plant of the undertaking without incurring similar expenditure. I agree that the figure we have arrived at is the lowest sum at which it could be done.

SIR JAMES WOODHOUSE:

The question which we have to determine in this case is what was the value of the plant of the National Telephone Company at the date it was taken over by the Postmaster-General, namely, the 31st of December, 1911.

The basis of that value was fixed by the contract made between the parties in 1905, and subsequently approved and ratified, with certain variations, by Parliament, to be what are known as "tramway terms" as set forth in section 43 of the Tramways Act, 1870, whereby any allowance for past or future profits, or any compensation for compulsory sale is excluded. The contract, however, contains a stipulation that, in making the valuation, we are "to have regard to the suitability of the plant for the Postmaster-General's telephonic service." Similar words are not to be found in the valuation clause of the Tramway Acts and the parties differ in their views as to the application of them to the facts of this case, but it will be more convenient to consider them hereafter under the head of "depreciation" to which they more particularly relate.

The plant which has to be valued is comprised under four principal heads, namely:—(1) Underground plant consisting of (A) Conduits; (B) Cables. (2) Overhead plant comprising (A) Poles and standards; (B) Bare wire; and (C) Aerial cable. (3) Exchange equipments; and (4) Subscribers' apparatus. It is agreed that, following the practice in tramway valuations, the Court must arrive at the value by two stages, namely, first we must ascertain what it would cost to reconstruct the plant *in situ* as new plant, and then we must reduce such cost to the true value by deducting the depreciation properly ascertained having regard to the lives and ages of the several portions of the plant, and the residual value (if any) of those portions which are scrapped.

The amount now claimed by the Company for replacement cost in respect of the above-mentioned plant is £18,010,427. They assess the depreciation at £2,237,256, leaving a net value of £15,773,171. To this they add a claim of £521,668 for obtaining subscribers' agreements, and thus bring their total claim up to £16,294,839.

The Post Office, on the other hand, put their replacement cost at £12,056,906, and the depreciation at £4,731,326, leaving a net value of £7,325,580. They decline to recognize the claim in respect of subscribers' agreements. Thus there is a difference between the two net values (including the subscribers' agreements) of £8,969,259 or, in round numbers, nearly £9,000,000.

Happily, the contentions between the parties in the earlier stages of the case as to the cost to be assigned to materials, labor down to the gang foreman, freight, and casualty insurance, about which we accumulated volumes of evidence and statistics, have been set at rest, by an agreement so wisely come to, during the hearing, assessing the fundamental replacement cost of these items under heads I. to IV. of the Claim at £10,239,345.

The difference in issue, therefore, apart from the question of depreciation, now left for the determination of this Court, refers to the subsidiary heads of the Claim, namely, ordering and storing materials; obtaining wayleaves; local engineering; district and local administration; head office engineering and administration; contractor's profits; rents; maintenance and insurance during construction; contingencies; interest during construction; cost of raising capital; and cost of obtaining subscribers' agreements.

The bulk of the foregoing are what are called the loading charges. The cost of them is estimated by the Company at £8,292,750, which is a percentage of 75.90 on the fundamental cost charges. The Post Office dispute that anything is due in respect of some of them, and they allow only a sum of £1,817,561 in the aggregate, in addition to the fundamental cost, being 17.76 per cent. of such cost, making a difference in issue as to cost in respect of these additional items of £6,475,189, whilst, as before stated, owing to the wide

divergence of view on the subject of depreciation, the net difference in values, about which we have to decide, is nearly 9 millions.

Our first duty, then, is to determine what it would cost to reconstruct the plant of the Company as it stood on the 31st of December, 1911, *in situ* and ready for use as a revenue-earning concern.

The parties approached the solution of this problem by different methods. The method of the Company assumed that the hypothetical constructor would put up the plant himself, that is to say, that he would employ his own staff, and engage his own labor, as they had in fact done in constructing about nine-tenths of their system. The method of the Post Office, on the other hand, was based on the supposition that the constructor would employ a contractor, or contractors, to put up the plant, and that he would not attempt to do it himself. They framed all their estimates and calculations on this assumption.

It becomes very important, in following the arguments and applying the evidence, to keep clearly in mind the broad distinction between these two methods of ascertaining the cost, so that, in making comparisons and balancing the results, we do not allow the methods to overlap and so get into confusion by passing from one to the other, as some of the witnesses did. It appears to me that we have to make up our minds, in the first place, which of these methods we will adopt in order to arrive at the more satisfactory result, and then weigh the estimates of cost put before us, as applied to that method, having regard to the evidence and the criticisms respecting them.

The contention of the Company was (and I think it is a sound contention) that the method by which they had built up their system was the most economical method of construction and that they were bound, therefore, to frame their claim and to estimate the reconstruction cost on this footing. They claimed, moreover, in support of their view, that it was the method which, in practice, the Post Office had adopted in the construction of the bulk of their own telephone plant. They asserted that it was the most economical

method because they had a large, experienced, and highly trained staff continuously engaged both in the work of constructing new plant, replacing old plant, and repairing and maintaining existing plant, and that cheaper and more efficient results were obtainable and had been obtained in this way than by employing contractors, because the operating staff could be employed on construction work when their time was not required for maintenance; and *vice versa*. The organization which came under consideration in this connection, therefore, was this. The Company had its head office in London, where the general manager and chief engineer with their administrative and supervisory staff were located. About one-fourth of the plant was in the London area, and three-fourths in the other parts of the United Kingdom. The executive work was organized outside London under district superintendents and local engineers, spread all over the country, who regularly reported to and received their instructions from the head office. The Company's system with its 561,356 stations, had been gradually built up during the 30 years of the license, although the average age of the existing plant is very much less. The Company had no compulsory wayleave powers, such as are possessed by the Post Office. All its overhead plant has been constructed on the basis of voluntary wayleaves, whilst its underground plant largely depended on agreements with local authorities and the Post Office. This added enormously to its difficulties and constituted a very serious factor in arriving at a conclusion as to the more economical method of construction and the time it would take. The marvel is that, in the face of these difficulties, the Company succeeded as well as they did.

The Crown, on the other hand, in adopting the contractor's basis, treated the problem rather from the point of view of an ordinary engineering contract. Whilst Mr. Gill, the Company's engineer, who gave his evidence most fairly, and whose knowledge and experience and thorough grasp of all the factors in the problem, and his admirable candor, made him a most trustworthy and reliable witness, said his view was that it would take upwards of 12 years to reconstruct

the whole of the plant, doing it most efficiently and economically in six divisions or centres, moving from area to area successively, under such an organization as that of the Company with the same limited and highly trained staff and taking two years for each area, the Post Office advisers thought contractors could put it up in less than half the time, covering, of course, all the ground simultaneously. No point of substance, however, now arises so far as what is left for us to decide, on this question of time, except in so far as it operates as an element in considering the cost of supervision. The Post Office, accordingly, arrived at their replacement cost on the view that, in addition to the agreed fundamental cost, they must add (A) a sum for contractor's supervision and administration which they assessed at 21 per cent. and increased, as the case developed, to 26.5 per cent. on £2,857,752, the agreed amount for labor down to gang foreman; (B) contractor's profit, 10 per cent. on the contract price (except in those cases where manufacturers did all the work and charged a profit on material), and (C) the cost of obtaining wayleaves. To this they added 5 per cent. on the contract price for what they called the fee of the consulting engineer, and his staff, employed to prepare the plans and specifications, etc., for the employer, and to supervise the carrying out of the work of construction on his behalf. This, they argued, would cover all the elements of value which had to be estimated.

In support of their view the Crown called, as their chief expert, Mr. Snell, who was many days under examination and cross-examination, and although he presented their case with the same fairness and painstaking care and ability which was so characteristic of Mr. Gill, he had not, of course, that experience, so invaluable in a case of this kind, of constructing telephone plant which Mr. Gill possessed. In addition to Mr. Snell, several manufacturers who made electric cables and telephone plant were called on behalf of the Postmaster-General to testify as to the amounts for which the plant could be constructed, the period which would be occupied, and the cost of the supervision. None of them had ever dealt with a telephone scheme of this magnitude. In

some cases they produced tenders which they had supplied in response to the request of the Postal Authorities as to the prices which they would charge for constructing some portions of the plant; but this evidence bore so plainly, on the face of it, the element of unreality, having regard to the fact that the tenderers knew they would never be called upon to carry out any such tenders, that it robbed it of that weight which we might otherwise have attached to it. Indeed, these contractor witnesses, eminent undoubtedly as some of them like Mr. Alexander Siemens and others, were, as manufacturers of plant, who also not infrequently contracted to lay down and did lay down what they manufactured, in expressing their opinions as to the estimated cost of construction and supervision of the plant we are valuing, did not appear to me to have adequately considered all the factors in the problem with that detailed care bestowed on it by Mr. Gill and which was absolutely necessary if they were to outweigh his evidence.

I accept the view so strongly emphasized by Sir Alfred Cripps, who argued the case for the Company throughout with conspicuous ability and fairness, that the best guide in this case to what the plant would cost was what it had cost; but I am far from being satisfied with the way in which some items of that cost were sought to be established. The contract of sale was made in 1905, and the officers of the Company, therefore, knew for five or six years before the transfer took place that a valuation would have to be made. It would, I should have thought, have been a comparatively simple matter for them to have kept an accurate detailed record for part of that time, during which some millions were spent on construction, of the actual expenditure under that head, the production whereof to the Court and to the Post Office would have been of the greatest value and assistance. Instead of that, we are asked to rely on results ascertained subsequently for varying periods, some of which are made up from memory, whilst others are based on assumptions and the application of percentages which are open to much of the damaging criticism so cogently enforced by the Solicitor-General in his masterly analysis of the Company's figures. We have often in this Court in railroad cases

expressed our distrust of the ratio principle as a formula for arriving at particular results, but never in my experience have we had that distrust so completely justified as by the illimitable use made of it in this case. As the Solicitor-General so truly argued, you have not only to be satisfied that both the top of the fraction and the bottom of the fraction are right, but that there is a real causal relation between them; otherwise, you obtain varying and misleading results.

On the other hand, the Post Office estimates of cost are also unsatisfactory when tested by cross-examination, because of obvious omissions and miscalculations which leave us without any solid foundation on which to arrive at a conclusion with that certitude and accuracy one would like to feel.

#### COST OF RAISING CAPITAL.

I now pass to the consideration of the items of Claim, and I will deal first with that relating to the cost of raising capital about which I have the misfortune to differ from my colleagues.

It raises a very important point of principle, and may establish a precedent in arriving at the statutory values under the Tramways Acts. With the utmost respect I adhere to the view which not only I took, but all the Members of the Court took until a late stage of the hearing, hence our telling the Solicitor-General at the outset of his reply that he need not trouble to argue it. The Company include as part of the cost of constructing their plant a sum of £757,657 for the cost of raising capital.

First, let us see how the Claim arises. It is shown on a statistical table of Mr. Anns', the Secretary of the Company, marked "A. A. 2." It deals with the money raised by the Company for a period of 10 years, namely, 1900-1909, inclusive. He says in that period the Company raised capital to the amount (in round numbers) of  $5\frac{1}{2}$  millions, and incurred expenses in so doing to the amount of £243,371, which is a percentage of 4.44, and he then applies this percentage to the construction cost to arrive at the cost of raising it. On an examination of the figures in the table it will be seen that this capital of  $5\frac{1}{2}$  millions was raised,



as to  $3\frac{1}{2}$  millions, in shares, and the balance of 2 millions in debenture stock. The expenses charged comprise £85,000 for commission; £85,000 for brokerage; £66,000 for discount; £3,750 for share capital registration duty; £2,062 for stamp duty; and £1,500 for advertising. I merely note in passing that, had the secretary extended his table a little further back, it would appear from page 249 of the blue book that the Company raised the money three years earlier, namely, in 1897, not at a discount, but at a premium of £15 per cent.

It is also not unimportant to note that, in his speech in reply, Sir Alfred Cripps abandoned the items of discount and duties, and asked only for the allowance of the brokerage and commission, but I fail to see that there is in principle any distinction between these items of expense.

The question is whether the cost of raising the money to pay for the construction of the plant can be taken into consideration in ascertaining the *value* of the plant. What we have to do is to ascertain the value of the plant. It is no part of our duty, and it is not within the ambit of our inquiry to ascertain how the money (the equivalent of that value) to pay for that plant shall be raised, whether in stocks or shares, or otherwise, or what will be the cost of raising or obtaining it. It is, with great respect, in my humble judgment, a wholly independent and irrelevant matter. For the purpose of ascertaining the statutory value of a tramway under the Tramways Act, it has been laid down that the value is what it would cost the purchaser to construct it.

To find out what it would cost to construct, then, is one of the steps to ascertain the value of the plant. It seems, necessarily, to follow that only these expenses which bear on the value of the thing constructed can be properly taken into account. Those expenses, forming the actual cost of construction, having been ascertained, represent the value. That value has then to be expressed and paid in the current coin of the realm. How, or where, that current coin is obtained, or what is paid for obtaining it, has nothing in the world to do with the value of the thing which is the subject matter of the payment. If it were otherwise, the cost of construc-

tion, and, equally, the value of the thing constructed, would differ according to the financial standing of the person who constructs. This could not be more pointedly and pithily expressed than in the little dialogue between the learned Judge and Mr. Gill, the Company's engineer, on the question being first raised on the 8th Day of the Proceedings, at page 244 of the Shorthand Notes, when the Judge said to Mr. Gill, who was giving evidence on the point: "You see, if what it costs (to raise the money) becomes an element of value of the plant, then the worse the credit of the person providing the plant the greater the value of the plant," to which Mr. Gill replied: "Yes, I see that, that is so." It obviously must be so. Take the case of two persons who construct the same article, the actual amount expended in producing the article—that is, the cost of constructing it—is identical in the two cases.

Now, assume in the one case the man who constructs, or pays for the construction, has the sovereigns at his command ready to pay the amount which has been expended in construction. In the other case the man has not the necessary capital at command, and, therefore, let us suppose he obtains it by selling out securities at a loss, or by borrowing it, and paying something to procure the accommodation. In the case of the man who had his money at command, he has constructed by merely sacrificing interest on his capital which he has put into the structure, and this we have actually allowed under another head of the Claim. In the case of the man who had not the sovereigns available, but has made a sacrifice to obtain them, or has incurred expense, more or less considerable, according to his circumstances and his credit, to borrow them—then according to the view of my colleagues, that loss, or that expense, must be added to the cost of the thing constructed, and becomes an accretion of its value. The cost, therefore, of the thing constructed must, by hypothesis, differ according to whether a man has to pay for raising the money, or is in a position to find it without incurring that expense. I fail utterly to see how this can be right, when we bear in mind that cost is only material as a step to ascertain the value of what is con-

structed. It is, in fact, making the value of the thing constructed vary with and be dependent on the financial ability or credit of the constructor.

Again, the cost of raising capital is not the cost in the sense that the vendor is saving anything to the buyer, because the buyer has to raise *his* capital when he comes to pay for what he acquires. Let me develop this a little. The Company in this case say they incurred so much in raising the money to pay for what they constructed, and therefore the value must include that cost. Let me assume that another company, instead of the Postmaster-General, is the purchaser of the undertaking, and that the purchase price at cost includes say £500,000 as the amount paid by the vendor company for raising its capital to pay for the structure. The value of the thing constructed stands in the books of the purchasing company, therefore, with this £500,000 as part of it, for which there is, in fact, no actual asset corresponding to the item. Now the purchasing company must also raise its capital to pay the vendor company this price, and the cost of raising this money must, in turn, equally become to it an element in the value of the thing bought. Thus, in the case of the second company, precisely the same asset will stand in its books enhanced in value by the amount it spent on raising its capital, and we have only to imagine a series of similar sales to perceive what an enormous value this same original asset will ultimately attain. This point, again, could not be stated in better or more convincing language than that used by the learned Judge in answering Mr. Gill's contention, at page 244, when he said, "the buyer has to raise his capital also. According to that, you see, if the cost of raising the capital is an element of value in a plant, the second time the plant changes hands, there have been two costs of raising capital, and so it would go on every time it changes hands. The plant would be increasing in value by reason of the cost of raising the capital necessary to purchase it." That, in my opinion, is the sound view, and the only logical conclusion from the premises underlying the Company's contention. I have heard no argument and can find none which displaces it. It is the view

taken by the only experienced men of business who gave evidence about it, *viz.*, by Sir William Peat, the eminent railway lawyer and manager, has had a very large professional experience in valuations. I do not see my way to regard this item as one which we can rightly include in the value to be ascertained. If, however, I am wrong in my opinion, I have no objection to the amount of £247,189 which my colleagues allow for it.

#### ORDERING AND STORING MATERIAL.

The Company claim to include in their cost the sum of £468,298 in respect of ordering and storing material in connection with the construction of the plant, comprising the rent and rates of the stores, the wages and expenses of the storekeepers and laborers, and numerous other details which I need not enumerate. This Claim does not appear as a figure or a summation of figures under this head in the books, but is arrived at as a percentage of 3.597 of plant cost (or including separate construction establishment, 4.496). This percentage is obtained in this way. The general superintendent made an investigation in eight different districts of the country to ascertain what had been the expenditure under this head attributable to construction account for a period of 12 months, but the same 12 months was not taken in each district. The investigation covered periods extending from 1st July, 1908, to the 30th June, 1910. The district officers kept their accounts of expenditure, which included outgoings and incomings, in district books, and divided it between construction and revenue in accordance with instructions sent down from time to time from the head office to which they made monthly returns. The head office kept books in which capital and revenue charges were separated; and the totals of these monthly statements were, after making adjustments, recorded in these books. The allocation of the charges between construction and maintenance was made in the proportions of the expenditure under these heads for the previous six months. As a result of the investigation made to find out what was the total amount chargeable to construction for one year during the above

period, in respect of ordering and restoring, the Company brought out the figure of £20,509. They then proceeded to ascertain the plant cost for a like period of one year. They did not, for this purpose, take one of the ordinary financial years of the Company extending from January to December, but a composite year from July, 1909, to June, 1910. They say this is a typical year, and was chosen because it was a period in which the information was, at the time they made the investigation, most readily attainable and freshest in the minds of those who had to depend on memory for many of the details.

The result is to bring out a figure of £592,548, as representing the total plant cost for this year. They then relate the construction cost of ordering and storing material, viz., £20,509 to this sum of £592,548, which gives a percentage of 3.461. They add for use of furniture by stores staff, .136, and for separate construction establishment, .899, obtaining a total percentage of 4.496. This they apply to the total agreed plant cost (less casualty insurance) of £10,196,480, and so make up the cost of £468,298. The basis of this percentage was severely criticized by the Solicitor-General on several grounds, and, particularly, on the ground that the numerator of the fraction was too big and the denominator too little and gave results which were wholly untrustworthy and unrepresentative of the real facts. The figure of £592,548 for plant cost of one year is a very important one, as it constitutes a governing factor in the percentages on which the cost of "district and local administration" charges, "local engineering," and "obtaining wayleaves" is arrived at. It is made up thus: the capital expenditure appearing in the books for this composite year is said to be £474,605. In order to arrive at the plant cost, adjustments had to be made in respect of entries in the capital account for plant which had replaced other plant scrapped or superseded in the particular period, and these amounted to £177,455, bringing up the total to £652,060. From this there had to be deducted a percentage of 15.6 of total charges for administration and supervision referable to the construction account, amounting to £59,512, and this left the figure of £592,548. The capi-

tal expenditure for 12 months above mentioned of £474,605 was strongly attacked as an unfair sample for arriving at a proper percentage, when compared with the average expenditure on construction account for many years previously, whether that average was taken over a period of six years, which was £770,000, or 11 years, which was £778,000. Mr. Weston, one of the Company's accountants, admitted it was not a fair average year. It was, moreover, the year just before the Company was coming to the end of its license, and admittedly was what was described as a lean year. I think a fairer way to arrive at the plant cost would be to have regard to an average capital expenditure for a year in the period corresponding with the average age of the plant, and, forming the best judgment I can on the facts and figures we have before us, and giving due weight to the evidence of the Post Office witnesses, *viz.*, Mr. Williams, who made an investigation into the Company's figures at Manchester and Cardiff, and Mr. Sparkes, who placed before us calculations of the Post Office cost of ordering and storing, I think a proper sum to allow for this item, including use of furniture, but excluding separate establishment for reasons dealt with hereafter, would be £267,759 instead of £468,298.

#### LOCAL ENGINEERING SUPERVISION.

A sum of £1,297,508 is included in the Claim as the cost of local engineering supervision, attributable to construction. This again is arrived at as a percentage not in relation to the wages of the workmen supervised but of the plant cost for the period of a composite year. This plant cost is ascertained at £1,044,093, and covers maintenance as well as construction. To this amount for plant cost the Company relate a sum of £89,625, as the ascertained cost for a like period of the engineers' salaries, expenses and rents, for both maintenance and construction, because, it is said, it was impossible to make any accurate separation between them. This gives a percentage of about  $8\frac{1}{2}$  per cent. (exclusive of separate establishment). It involves the assumption, therefore, that supervision bears substantially the same ratio to plant cost, whether it is referable to construction

or maintenance. Personally, I am satisfied that this percentage is unreliable. In the first place, the figure for plant cost is not a fair or typical average amount. It is admitted by the Company's witnesses to be an abnormally low figure for a year's expenditure on plant cost, and this becomes quite apparent when the figures are averaged over a period of years. It includes the much discussed figure of £592,000 for construction cost, which has been dealt with already. I think, moreover, that the ratio which maintenance bears to plant cost is not the same as that which construction bears to plant cost. The evidence satisfies me that it is more costly to supervise maintenance work than construction work, because the proportion of the labor supervised is so much larger in the former than in the latter, though what the exact proportions are, I am left in much doubt. One of the Company's witnesses admitted that the salaries in the case of local administration had been apportioned in proportion to the wages expenditure, on the ground that in checking works orders the wages were the better test, as "the material took care of itself."

Then, as to the numerator of the fraction of £89,000, this figure has no independent origin. It is the result of a special investigation in certain districts for a specific period as in the case of ordering and storing material, and the percentage derived from it has been applied generally. It includes, admittedly, a large proportion of standing charges which do not vary in proportion with the plant cost being high or low. The amount is deduced from figures collected in the manner explained, adjustments are made between capital construction and revenue of maintenance, and the result is taken as a sample or type for arriving at a percentage which is then applied to the whole. Of course it lends itself to numerous errors. I am satisfied under this head the percentage is too high, and making the best calculation and adjustment we can, I think the figure should be £660,732.

#### DISTRICT AND LOCAL ADMINISTRATION.

Then, again, with regard to local administration for which the sum included in the Claim is £846,915. This figure has

no sounder basis than the previous ones. It is not a sum appearing in the books, though it is said to be deduced from the books and records. It has no more independent origin than the previous items. It is the result of a percentage of which a sum of £35,611 is the numerator and the aforesaid figure of £592,000 is the denominator. The £35,000 is said to represent the total amount of administration expenses for the year 1909, and is derived from a special detailed investigation made at Gloucester which the general superintendent said was chosen because it was the smallest in the list of eight places to be investigated and had the fewest figures to be dealt with. The total expenses at Gloucester were £2,511, and the officials making a division of them according to time occupied, some time subsequently, between construction and revenue did so from memory, and allocated a proportion of each item of expenditure to construction according to a varying percentage in relation to the wages spent which gave a result at Gloucester of £512. Applying these percentages to all the other districts the total expenditure came out at £222,525, and the percentage for construction to the above named figure of £35,611 which corresponds with the £512 at Gloucester. The Company's accountant says it is an accurate figure with the not unimportant qualification that it is made up of many assumptions and percentages, and based on the analysis of time arrived at from memory. It was, not unnaturally, severely criticized on this ground. Admittedly, here too the figures do not fluctuate year by year in proportion to the amount of construction charge which, in the period chosen, was particularly low. I think from any point of view the high percentage charge of 6.170 on which this item is based (excluding again the separate establishment charge) cannot be sustained, and that the proper allowance to make in respect of this item is £267,759.

#### HEAD OFFICE ENGINEERING AND ADMINISTRATION.

We next have to consider the items of £667,611 for head office engineering and £781,911 for head office administration. The Claim for head office engineering as part of the construction cost admittedly is not what it has cost the Com-



pany. It was put forward as a usual and over-all charge which the Company were entitled to include for head office engineering supervision, as might be done if the constructor had employed a contractor and had not done the work by his own staff. The actual cost was found by the books to amount to 1.14 per cent., not by relating the engineering cost to capital expenditure, but to the total expenditure of the Company, whether on capital, revenue, or business management. Sir Alfred Cripps, in summing up his case, admitted that he could not consistently, with the basis on which the Company's claim was framed, namely, that of the employer doing the work, justify this over-all percentage. He acknowledged it would be departing from the point of view from which he wished the Court to regard the Claim, and would be stepping out of one system into another, and would not be consistent. I entirely agree with this view.

Then with regard to the head office charge for administration. This, including engineering and all the central administrative charges of general manager, and solicitors and directors, etc., was worked out as a percentage of 5.5. Here, again, there was no attempt made in allocating these expenses to distinguish between what was attributable to capital, to revenue, and to business management. The percentage was arrived at by relating the expenses to the total outlay, though I think it is a very strong assumption to make, that in a business of this magnitude, where the gross income is between 3 and 4 millions a year, and where the revenue expenditure is larger considerably than the capital expenditure, and where the salaries of the principal officers and staff are more than half the administration expenses, that they do not bear a greater proportion to the business side than the constructive side of the concern.

Dealing with both these items of head office engineering and administration together, I concur in the allowance of £560,806.

#### OBTAINING WAYLEAVES.

The sum of £168,179 for obtaining wayleaves is alleged by the Post Office to be very excessive, the Post Office figure in contrast being £42,000. The aggregate figure is again the

result of a percentage arrived at by relating a total sum of £11,133 as a year's cost of the salaries and wages of wayleave officers and canvassers, and including rents and district supervision, to a total plant cost of £810,287. The £11,000 is ascertained from an investigation at Gloucester, made as previously mentioned, and the £810,000 includes the much criticized figure of £592,000 for construction cost, and £183,000 for line repairs, and £34,499, being 50 per cent. of the cost of removals, giving a percentage, including furniture, of 1.385 per cent., which is applied to the total plant cost, and £4,000 is added for stamps. It is obvious from what has been previously said as to the £592,000 that this result cannot be regarded as a satisfactory one. Both sides discussed the item in reference to the cost of poles. The Post Office alleged that they estimated their cost of wayleave rights as amounting to about 1s. per pole, but they recognized that, owing to the greater difficulties the Company had to contend with, arising from the absence of compulsory powers, the Company's cost would be greater than theirs, and they allowed 2s. per pole on the number of poles, namely, 427,527, whereas, on the same basis, the Company's claim amounts to 8s. per pole. The Company, on the other hand, suggested that the wayleaving should be spread over not only poles and struts but brackets, spikes and stays, aggregating 1,115,000. which would reduce the average to 3s. I think, as a result of careful examination of all the detailed figures, a sum of £100,000 would be a right amount to follow.

#### CONTRACTOR'S PROFITS.

The sum of £1,434,163 is claimed under the head of contractor's profits, but it is difficult to see how the Company can possibly, consistently with their case, except in respect of the plant put up by contractors, include any such amount in their construction cost. As we have seen under the head of head office engineering, Sir Alfred Cripps abandoned the over-all charge he had, in the first instance, put forward, on the ground that it was inconsistent with the basis of the employer doing the work for himself on which he framed his case on economic grounds for arriving at the construc-

tion cost. Equally would it be inconsistent, as it appears to me, to include a huge over-all charge of 10 per cent. representing what a contractor might be supposed to receive, though there is no evidence that a contractor ever did receive such a profit in a work of this character, as remuneration for his skill, and labor, and risk, and covering, indeed, other items, which are in the Company's particulars of cost claimed for and allowed by us under heads of claim. The economy which is so strongly urged by the Company as accruing from the employer doing these works himself, instead of resorting to the employment of contractors, would largely disappear if the employer were to debit a huge contractor's profit, which he never incurred or had to pay in respect of their construction. Mr. Gill admits no such profit is to be found as a charge or item of cost in the Company's books in respect of the works which the Company did for itself, just as no such charge as 5 per cent. for head office engineering, first put forward and then abandoned, was found in the books.

It was urged by Sir Alfred Cripps that to refuse any allowance for this item would be to penalize the Company for their economy. The same argument might have been applied to the over-all charge in the case of head office engineering. I should certainly not desire to do anything that could be justly regarded in the light of penalizing the Company. There would be no justification for such an attitude, and it would not be in harmony with the feelings of the Court, nor with that fair and broad-minded spirit in which the Attorney-General and the Solicitor-General presented the case of the Crown, and manifested throughout the Proceedings in dealing with the Claim. But in weighing the matter, one must not overlook the reasons why we were so strongly pressed by the Company's Counsel to regard the case from the standpoint of the employer doing the work himself, and in disregarding the opposite view, and in accepting that view, the allowance which we have made in giving effect to it. Taking all the facts into consideration, and bearing in mind that, to a comparatively small extent, the Company did employ contractors, I think £300,000 is a reasonable allowance.

## CONTINGENCIES.

With regard to the item of £296,034 for contingencies, I do not see how it can be substantiated. It is calculated at 2 per cent. on the contract cost. It is no doubt usual when a contractor makes a tender to construct works or plant, to include in his estimate a percentage of this character to provide against miscalculation in quantities, and other elements of uncertainty. But we are dealing in the case put before us by the Company with calculations based on what it actually cost the Company to do the work for themselves, where all the factors of cost are ascertained and provided for.

It is clear by the express terms of the agreement between the parties that the agreed green figures as to fundamental cost—the amount of such cost for material and labor in columns A and C has been ascertained, and whatever element of contingency was left open for discussion, could not apply to the figures in those columns, but it is contended it would apply to the cost of freight in column B. I do not see how this can arise. If the figures are ascertained and agreed for the material, and the rates are known, and the freight is calculated thereon, what element of contingency is there left to be provided for, within the description put forward by Mr. Gill, the Company's engineer? Mr. Cook, the assistant engineer, admitted that the item could not be regarded from the point of view of a contractor's percentage, but said it was intended to cover any omissions or errors in the inventory. But the inventory is an inventory checked by both sides, and the particulars and quantities are ascertained and agreed—so here, again, I fail to see the applicability of the item proposed to be included in the cost, and, in my view, therefore, there is nothing to be added in respect of this item.

## INTEREST DURING CONSTRUCTION.

The Solicitor-General conceded that the item for interest on the instalments payable during construction was not unreasonable in principle, and taking Mr. Gill's two-year period as the basis of construction for each area, one year's interest was not challenged as a fair allowance; and we ac-

cordingly allow for this and for interest on working capital, £463,426.

#### COST OF OBTAINING SUBSCRIBERS' AGREEMENTS.

The item of £521,668 for subscribers' agreements was stoutly challenged as a wholly untenable item of construction cost.

These are the agreements which it has been necessary for every subscriber to enter into before the Company would instal the necessary instrument in his premises. The agreements have, from time to time, varied in form. In some of them the Company bind themselves to put up the required plant, but all of them contain the license for the Company to enter the premises to put up, and on termination, remove the apparatus. They contain also provisions as to the terms of subscription and other conditions affecting the renter's obligations. It was argued that these agreements, and the charges of the canvassers and others in the contract department for obtaining them, were no part of the construction cost, and related solely to the business side of the accounts. It was admitted, on behalf of the Company, that the Claim was over-stated, and that undoubtedly the agreement did affect the business as well as the constructive side of the concern. I am of opinion that, as it would not be practicable to carry out the process of construction without an agreement in the first instance, they stand, to the extent to which they relate to construction, in a like category to wayleave agreements, and a substantial sum should be allowed in respect of these agreements as part of the construction cost, and I think, after taking depreciation into consideration, £150,000 would be a proper allowance to add to the net value when ascertained.

#### RENTS, MAINTENANCE, WAYLEAVE PAYMENTS, AND INSURANCE UNTIL THE PLANT BECOMES REVENUE EARNING.

An item of £264,821 is claimed for rent of premises, wayleave payments, and insurance and maintenance of plant until it becomes revenue earning. This item does not appear to have been seriously challenged in principle, but the

amount is undoubtedly open to serious question. The evidence in support of the figures is very unsatisfactory. The first calculations were admittedly quite erroneous, and, on carefully reviewing the reduced figures, I am far from satisfied with the evidence about them. Mr. Cook, the assistant engineer who was called to prove them, admitted they were founded largely on assumptions, the result of judgment, and not on any data or calculations which could be checked. With regard to maintenance, so far as I follow the evidence, no distinction appears to have been drawn between what arises in respect of works for which contractors were responsible and works for which they were not. It is an item in respect of which if we allow £200,000 I am satisfied we are making a very liberal allowance.

#### SEPARATE ESTABLISHMENT.

In calculating their percentages the Company included a sum for what they called separate establishment charges. This was to represent, as I understand, economies which they considered accrued to the advantage of the construction account from the fact that, as Mr. Gill pointed out, the Company was practically combining two businesses, a large construction business and a large operating business, and, in respect of stores, men's wages, and in other details, money was thereby, he believed, saved which a constructor not so circumstanced would have to incur. I share the view, that any economy accruing in this way fairly balanced by the extra cost which, undoubtedly, would arise from the piece-meal method of construction involved in the Company's calculations of cost, and which formed the subject of so much criticism on the part of the Solicitor-General. I, therefore, exclude any such claim from our calculations of costs.

The result, therefore, of the figures at which I have arrived, including the agreed fundamental cost of £10,239,345, is to give an estimated replacement cost of plant £13,059,827.

#### DEPRECIATION.

Having ascertained the replacement cost, we have next to determine the amount which shall be deducted from it for depreciation. In order to assess this we must have regard

to the lives of the various portions of the plant, the ages for which they had existed at the date of transfer, their condition at that date, the residual or scrap value, and, lastly, we must find the right multiplier for calculating the depreciation. It is in this connection that we have to determine the interpretation which we shall put on the words "suitability of the plant for the purposes of the Postmaster-General's telephonic service" in the valuation clause of the contract. It is agreed that we have not, in construing these words, to deal with the difficulty which arose in the preliminary proceedings with regard to clause 3 of the agreement, when it was decided by the Court of Appeal that "unsuitable" was a quantitative as well as a qualitative expression. Here the quantity of plant which has to be taken has been settled by an agreed inventory, and no question of redundancy arises. Suitability can only have reference, therefore, to the fitness or condition of the plant. The Company's Counsel asserted that they were entitled to ask the Court under these words to make some addition to what we might otherwise regard as the value of the plant, but I do not think this was the interpretation which it was intended should be put upon them or which they will rightly bear. The Company admitted they had put down no amount in their Claim expressive of this contention. I think the words were intended to qualify or limit what otherwise would be the ascertained value, but the precise nature of that limitation is a matter of wide and serious divergence between the parties. First, it arises in connection with the life of the plant. The basis on which the Company ask us to assess the depreciation is to that of its physical life *i. e.*, the period during which it would be available for use and could be efficiently used if it were not brought to a termination by some change referable to economic considerations affecting the business.

The Post Office, on the other hand, contend that the right test is to take the period for which, under normal conditions, the plant, as telephone plant, would be likely to remain *in situ*, according to the ordinary user of the plant, under prudent business management. If it had to be re-

moved at a period shorter than that if its physical life for commercial or economic reasons, this shorter life—called the effective or proper life—it is contended, is the true standard or test by which its existence must be measured. If it was found expedient or more economical, for example, to take down aerial cables or other overhead plant and put them underground, or if poles, though only half through their natural life, were removed to make room for larger or stouter poles which would carry a larger number of wires than could be carried on the poles removed or recovered—in both of these instances, whilst the old plant would have been quite serviceable for the purposes originally intended—its continuance for business reasons became economically undesirable. The fact that replacement changes must be continually going on is not challenged. It was very forcibly put by the late very able manager of the Company in his evidence before the House of Commons Committee, when he said, “You have constant changes going on and in the replacement of overhead systems by underground systems you take down plant long before the life of it is exhausted. That is a process,” he said, “which is going on every day, and I hope will go on.”

It was very forcibly urged by the Solicitor-General that these considerations were within the purview of the words of the valuation clause, and that we could only adequately give effect to them by the limitation of the life of the plant to its practical or effective life as exemplified in the way I have mentioned. I do not think, however, that it would be a right or reasonable interpretation to so construe the words “suitability for the telephonic service of the Postmaster-General” as to give them this effect. It would be making the value of the plant dependent on and determinable by the will and for the future business exigencies of the buyer whose governing factor would naturally be the desire to earn, in the most advantageous way he could, revenue in respect of which the seller would have no voice or control and no interest whatever. We are precluded from taking into consideration all such circumstances to enhance the price on the part of the vendor, and I think equally they



must be excluded in relation to the purchaser. Plant which has to be renewed because its life is shortened by the withdrawal of wayleaves, or which is rendered ineffective by the operations of nature and causes beyond the control of the owner, such as electrolysis, or which becomes obsolescent owing to scientific improvements or inventions superseding existing methods, may, I think, be properly considered and allowed for under the words in the contract.

It is true, as the case has been presented to us, it is not easy to quantify the measure of depreciation which should be allowed for these causes which reasonably and properly justify allowance. It is admitted that we can give effect to it by relation to the physical life of those portions of plant where we think it is justly applicable. After much consideration, I have come to the conclusion that we can satisfactorily express this in reference to the physical life by making such qualifications and allowances as the facts in evidence justify, and this we have endeavored to do. The next important point is by what method is the value to be calculated. Is it by the "Sinking Fund" method on the basis of compound interest as contended for by the Company, or are we to adopt what is known as the "Straight-line" method in which the value is reduced in the ratio which age bears to the life of the plant, which is the basis of the Post Office. I have no hesitation in adopting the latter. The former seems to me wholly inapplicable to a case between a buyer and a seller, and not one of the Company's experienced witnesses had ever known it so applied in any case of sale of a commercial undertaking. The elements of constancy and certainty both as to period and income which are essential to the proper application of the sinking-fund method are non-existent in the case under consideration. It may, no doubt, be right as applied to the case of an annuity or the valuation of a leasehold interest, but to apply a sinking fund to depreciate plant in a commercial undertaking involves too great an element of speculation, and would operate, if a miscalculation were made as to the length of life, very unjustly in practice. No doubt it is true that the straight-line method also is not free from some element of risk, but there is

this difference, so well exemplified by Sir William Peat, that, by that method, both parties would lose the same or gain the same.

We have taken the utmost pains, in dealing with the most elaborate and complicated tables relating to the depreciation of the plant under their various heads, to work out what, in view of the altered replacement values is the right amount of depreciation to allow, and, after making fair allowance for the matters we have referred to, we have arrived at the conclusion that the proper amount to allow for depreciation is £2,997,220.

The result, then, of the whole matter is this: We find replacement value to be £13,059,827. Deducting from this the sum of £2,997,220 for depreciation, we get a net value of £10,062,607. To this we add the sum of £150,000 in respect of subscribers' agreements, making a total aggregate sum of £10,212,607 upon which we are all agreed. To this sum my colleagues add £247,189 in respect of the raising of capital, in which I do not concur. The value, therefore, for which judgment will go is the larger sum of £10,459,796.

The parties, some time since, agreed that in respect of all the other various heads of claim, including land and buildings, etc., there should be added to the Judgment of the Court the sum of £2,055,468, and, therefore, the final Judgment of this Court is that the sum of £12,515,264 is the amount to be found by the Postmaster-General for the Company, which includes the sums we authorized at the request and by consent of the parties to be paid by way of interim payments.

I cannot take leave of this memorable case which has occupied the time and thought and energies of the Court for so many months without expressing my personal obligations to the learned Counsel on both sides, and to the Solicitors who instructed them, for the able assistance which they have rendered to us and for the ready and courteous way in which they always met every request of the Court. It has been an extraordinary case, and only the Members of the Tribunal who have had to listen to it and to collate, to digest, and to weigh, the enormous mass of material put before us, can

adequately appreciate the prodigious labor, with its accompanying strain which must have taken place behind the scenes in compiling and putting it before us.

To Sir Alfred Cripps and Mr. Danckwerts and their coadjutors, as well as to the Law Officers and the other learned Counsel for the Crown, not only we, but also the parties to the litigation, are greatly indebted for the great skill and ability, as also for the tact and good feeling which they displayed throughout the hearing and which enabled complicated issues to be narrowed, and others, at a great saving of expense, to be reduced to an agreement.

And, lastly, only my colleague, Mr. Gathorne-Hardy, and myself know how our labors throughout have been lightened by having the assistance of a Judge who has been so patient and considerate and so anxious to see that nothing was left undone to ensure that the Court should arrive at a just and equitable determination of the case.

## PART II.

### COMMISSION ORDERS, RULINGS AND DECISIONS OF INTEREST TO TELEPHONE AND TELE- GRAPH COMPANIES.

[*Note: Owing to lack of space, only summary statements of many of the decisions involving points of interest are printed in this Leaflet.—Ed.*]

#### CALIFORNIA.

##### Railroad Commission.

#### IN THE MATTER OF THE APPLICATION OF THE CALIFORNIA- MICHIGAN LAND AND WATER COMPANY FOR PERMISSION TO EXERCISE FRANCHISE AND FOR EXTENSIONS.

Application No. 273—Decision No. 419.

*Decided January 23, 1913.*

#### Approval of Same Rates as Those to be Charged by Compet- ing Utility. [Ed.]

Amending clerical error in original order and permitting intervenor company to charge the same rates as are proposed to be charged by applicant.

*B. J. Bradner*, for applicants.

*Edwin C. Cribb*, for Cribb-Brodek Light and Water Company.

#### AMENDED ORDER.

LOVELAND, *Commissioner*:

WHEREAS, The opinion and order\* in the above entitled application was regularly issued on the 15th day of January, 1913; and,

WHEREAS, A clerical error has been discovered in the fifth paragraph of said order, said clerical error appearing in the fifth and sixth lines of said fifth paragraph, a portion of said fifth and sixth lines reading "three and one-fourth ( $3\frac{1}{4}$ ) cents per one hundred gallons" when it should have read

\*Printed in Commission Leaflet No. 15, at page 309.

"three and one-fourth ( $3\frac{1}{4}$ ) cents per one hundred cubic feet";

*Now, therefore*, said fifth paragraph is hereby ordered corrected and is corrected to read as follows:

*Provided*, that said California-Michigan Land and Water Company shall supply water to the residents and users of said tract at the rate of not to exceed two dollars (\$2.00) per month for ten thousand (10,000) gallons (one thousand three hundred thirty-three and one-third ( $1,333\frac{1}{3}$ ) cubic feet) and three and one-fourth ( $3\frac{1}{4}$ ) cents per one hundred (100) cubic feet for all water used in excess of the ten thousand (10,000) gallons per month; and,

WHEREAS, The consumers of water of the Cribb-Brodek tract have expressed their satisfaction with the rates proposed by the California-Michigan Land and Water Company by entering into contracts at such rates; and,

WHEREAS, The Cribb-Brodek Light and Water Company has been charging said consumers a different rate, to wit: less for domestic purposes, but considerably more for the purposes of irrigation, but has now requested permission to charge the same rates; and,

WHEREAS, The Commission believes that said Cribb-Brodek Light and Water Company should have the privilege of charging the same rate as that proposed by the California-Michigan Land and Water Company and accepted as satisfactory by the water users,

*Now, therefore*, it is held that the Cribb-Brodek Light and Water Company should be permitted to charge the same rate, and the opinion and order in Application No. 273\* is hereby supplemented; and

*It is ordered* that the said Cribb-Brodek Light and Water Company be permitted to charge rates not in excess of those proposed by the California-Michigan Land and Water Company.

The foregoing supplemental and amended opinion and order are hereby approved and ordered filed as the supplemental opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 23d day of January, 1913.

IN THE MATTER OF THE APPLICATION OF CENTRAL CALIFORNIA  
GAS COMPANY, FOR AN ORDER AUTHORIZING THE ISSUE  
OF PREFERRED STOCK OF THE PAR VALUE OF THIRTY  
THOUSAND DOLLARS FOR THE PURPOSE OF PAYING ITS OR-  
GANIZATION EXPENSES.

Application No. 231—Decision No. 426.

*Decided January 30, 1913.*

**Authorization of Stock for Organization Expenses—Services of  
Promoter—Bond Expense. [Ed.]**

*Held*, with regard to allowance of capital stock for promoter's services and organization expenses, such expenses, if honestly and wisely incurred, are as necessary to the success of a public utility and are as properly subjects of capitalization as the cost of the component parts of the utility's physical plant or system, and that the same should be paid for in cash where possible at their reasonable value to the utility. Wherever possible, the moneys actually spent on these items should be ascertained and reimbursement made for them. While it is not always easy to estimate the value of a promoter's services, the inquiry should be made as to the amount of time which he has devoted to the organization of the utility and to the reasonable value of work such as that which he performed during that time. A public authority, in estimating the value of such services, should be liberal so that men of ability may be attracted to the development of new utility enterprises where needed for the development of the State. It may be well that, in addition to a reasonable compensation for the time devoted to the work, the promoter should be allowed an additional remuneration to compensate him for his risk of failure and the use of such money as he may have invested in the organization and promotion of the enterprise.

*Held*, with regard to an item of expenditure made in payment of fees for obtaining authorizations to the issue of bonds, such organization expense cannot be allowed for the reason that if it were allowed, applicant would have received, by so much less than the minimum price of 80 cents on the dollar, for which it was authorized to sell and has contracted to sell, most of its authorized bonds and preferred stock.

*Lester G. Burnett*, for applicant.

**REPORT.**

**THELEN, Commissioner:**

This is an application for authority to issue 6 per cent. preferred stock of the par value of \$30,000 to pay applicant's organization expenses.

Applicant was incorporated under the laws of California on January 8, 1912. Since that date it has acquired the

property of Home Gas Company of Porterville and of Consolidated Heat, Light and Power Company, which latter company supplies Visalia and Tulare with gas. Applicant proposes to produce at its main plant in Visalia a supply of gas sufficient for Visalia, Tulare, Exeter, Lindsay and Porterville, and the intervening territory. Transmission lines are to be built between Visalia, Exeter, Lindsay, and Porterville, distribution systems are to be constructed in Lindsay and Exeter, improvements are to be made to the plant in Visalia, and additions are to be made to the distributing systems in Visalia, Tulare and Porterville. Applicant intends to make service connections free and to conduct an active canvass for business in the entire territory.

In pursuance of these purposes, this Commission has heretofore authorized the issue by applicant of certain bonds and preferred stock of the par value of \$6,500 to citizens of Lindsay at par and issued preferred stock of the par value of \$15,000 to General Operating and Construction Company on a construction contract on which nothing has been done or will be done by the latter company. Applicant also issued for the same consideration, which has failed, its entire authorized issue of common stock, amounting to a par value of \$50,000, which stock has now been made by endorsement non-transferable under an order of this Commission. The amount of bonds and preferred stock so authorized or issued is as follows:

	Bonds.	Preferred Stock.
Issue to General Operating and Construction Company .....		\$15,000.00
Home Gas Company of Porterville purchase..	\$31,000.00	28,500.00
Issue to citizens of Lindsay.....		6,500.00
Improvements at Porterville.....	7,000.00	5,300.00
Transmission line Porterville to Lindsay....	24,000.00	13,800.00
Transmission line Lindsay to Exeter.....	13,000.00	8,300.00
Distributing system in Lindsay.....	14,000.00	8,400.00
Distributing system in Exeter.....	10,000.00	5,700.00
Consolidated Heat, Light and Power Company purchase .....	119,000.00	75,500.00
Transmission line Exeter to Visalia.....	20,000.00	11,800.00
Improvements Visalia and Tulare.....	12,000.00	7,400.00
	<hr/>	<hr/>
	\$250,000.00	\$186,200.00

Of said bonds and preferred stock, there were issued on December 30, 1912, bonds of the face value of \$150,000 and preferred stock of the par value of \$125,500. Applicant avers that it has contracted to sell a total of \$250,000 face value of bonds and \$157,300 par value of its preferred capital stock, that it is proceeding rapidly to install the contemplated improvements and extensions and that the consolidation effected by applicant will result in furnishing gas service to a largely increased territory and in rendering better service to the entire territory heretofore served, with a possible ultimate reduction in rates.

Applicant now asks for authority to issue its 6 per cent. preferred stock in the par value of \$30,000 to meet the following organization and promotion expenses:

Wm. R. Staats & Co., <i>in re</i> bond issue.....	\$1,000.00
Engineers' fees .....	2,100.00
Attorneys' fees .....	2,150.00
Printing, newspapers .....	600.00
Printing, bonds, stock certificates, trust deed, etc.....	1,876.00
Trustee's fees, Los Angeles Trust and Savings Bank.....	750.00
Salaries and office expenses, Dec., 1911-Dec., 1912.....	7,200.00
Railroad Commission bond issue fees.....	500.00
Traveling expenses .....	1,500.00
Incorporation and miscellaneous expenses.....	700.00
	<hr/>
	\$18,376.00
Add for organization and promotion fees.....	5,624.00
	<hr/>
	\$24,000.00
Preferred stock at 80 per cent.....	30,000.00

Applicant asks that this Commission recognize the issue of preferred stock in the par value of \$15,000 heretofore issued to General Operating and Construction Company and authorize the issue of an additional \$15,000 of preferred stock. Applicant in its petition alleges that if the order is made as prayed for, Central California Gas Company will be charged with no organization expenses or fees for services rendered in connection with organization other than those hereinbefore set forth and that if additional organization expense arises it shall be considered and included in the organization expenses and fees provided for in the order.



In connection with this application, this Commission directed its department of statistics and accounts to make a careful examination into the financial condition of applicant and particularly into the items hereinbefore submitted as organization expenses. Because of the very unsatisfactory condition of the books of applicant's predecessors, the examination has not been completed until now. From this examination, the following facts appear in connection with the items submitted as organization expenses. The fee of Wm. R. Staats & Co. includes the services of accountants, engineers and attorneys in examining applicant's property in connection with its bond issue. The engineers' fees are for plans and specifications for applicant's proposed improvements and extensions, valuations of the property and appearances at hearings before this Commission. The attorneys' fees are for services in connection with applicant's incorporation and appearances before this Commission. The newspaper printing item covers principally printing of franchise applications before the local authorities and also a small sum for the printing of notices of hearings before this Commission. For items totaling \$237.85 no receipts were produced. The item of printing of bonds, stock certificates, trust deeds, etc., should be increased to \$1,952.32. The item of trustee's fee was accounted for with the exception of \$14.40; the chief elements of this item are fees of \$500 for acceptance of trust and \$100 for burning 600 bonds. The items of \$7,200 for salaries and office expenses includes a claim of C. S. S. Forney, the promoter, of \$6,000, being a salary of \$500 per month for a year, and items for rent, stenographer and telephone for an office in Los Angeles. The item of \$500 for Railroad Commission fees was paid as provided by law for certificates authorizing the issue of securities. The item of traveling expenses was not supported by any vouchers. It represents trips of Mr. Forney between Los Angeles and San Francisco, automobile hire and similar undefined expenses. The item for incorporation and miscellaneous expenses was accounted for with the exception of \$63.13. The item for organization and promotion fees is an estimate to balance and is alleged to represent the promoter's

risks, interest on moneys advanced and kindred items. In this connection we would draw attention to the fact that of the list of items submitted, only \$3,697.04 seem to have been paid.

The item for bond expense can not be allowed for the reason that if it were allowed applicant would have received by so much less than the minimum price of 80 cents on the dollar for which it was authorized to sell and has contracted to sell most of its authorized bonds and preferred stock.

Applicant's table, reconstructed so as to show items accounted for, and somewhat rearranged, reads as follows:

Engineers' fees .....	\$2,100.00
Attorneys' fees .....	2,150.00
Printing, newspapers .....	362.15
Printing, bonds, stock certificates, trust deed, etc.....	1,952.32
Trustee's fees .....	735.60
Office expenses, rent, stenographer, telephone.....	1,200.00
Railroad Commission fees .....	500.00
Incorporation and miscellaneous expenses.....	636.87
	<hr/>
	\$9,636.94
C. S. S. Forney's salary claim.....	6,000.00
C. S. S. Forney's traveling expenses claim.....	1,500.00
C. S. S. Forney's organization and promotion claim.....	5,624.00
	<hr/>
	\$22,760.94

The Commission has analyzed the revenues and expenses of the companies which were consolidated into applicant, for the year ending December 31, 1912, and has taken into consideration the possible development of the coming year, to ascertain whether it may safely authorize the issue of any additional preferred stock at the present time. While the Commission is not certain that applicant will be able, after meeting the interest on its bonds and setting aside a proper sum for depreciation, to pay 6 per cent. on its preferred stock, issued and to be issued, the Commission is of the opinion that the issue of the \$12,500 additional preferred stock herein authorized, with a possible maximum interest requirement of \$750 per annum will not affect the result materially either way.

The Commission is of the opinion that promotion and or-

ganization expenses, honestly and wisely incurred, are as necessary to the success of a public utility and are as properly subjects of capitalization as the cost of the component parts of the utility's physical plant or system, and that the same should be paid for, in cash, where possible, at their reasonable value to the utility. Wherever possible, the moneys actually spent on these items should be ascertained and reimbursement made for them. While it is not always easy to estimate the value of a promoter's services, inquiry should be made as to the amount of time which he has devoted to the organization of the utility and to the reasonable value of work such as that which he performed during that time. A public authority, in estimating the value of such services, should be liberal, so that men of ability may be attracted to the development of new utility enterprises where needed for the development of the State. The need for a liberal policy in this regard is particularly apparent in states like California, in which there is still a wide field for legitimate new public utility development. It may well be that in addition to a reasonable compensation for the time devoted to the work, the promoter should be allowed an additional remuneration to compensate him for his risk of failure and the use of such money as he may have invested in the organization and promotion of the enterprise. In this, as in other respects, this Commission believes that the State of California should deal liberally with those who, by the establishment of utility enterprises, are aiding in the legitimate development of the State.

In the case now under consideration, it will be noted that some \$13,124, or something over one-half of the total claimed, is for the time and traveling expenses of Mr. Forney, the promoter, and for organization and promotion fees, by which the applicant means the risk taken and interest for the use of such moneys as have been advanced. After mature consideration, taking into consideration the total amount involved, the economic benefits which may reasonably be expected to accrue from the applicant's operations, the development of new territory which has not hitherto been supplied with gas and the time devoted to the enterprise by the pro-

moter, we have reached the conclusion that the amount which may properly be allowed for this item is \$12,000, being \$1,000 per month for the twelve months during the organization period. We shall also allow \$363.06 for items as to which expense was incurred, but as to which no receipts are on hand. This will make a total authorization of \$22,000. At the price of 80 per cent. of par, at which price applicant expects to sell its preferred stock, it will take stock of the par value of \$27,500 to yield the sum so authorized. As preferred stock of the par value of \$15,000 has already been issued to General Operating and Construction Company for organization expenses, the additional amount which may be issued under this authorization will be \$12,500. It will be understood, of course, that this application is decided on its own particular facts and that the decision herein with reference to the amount allowed for organization and promotion expenses will not be conclusive on the Commission in any other application.

I submit herewith the following form of order:

### ORDER.

Central California Gas Company having applied to the Railroad Commission for the consent of the Commission to the issuance by said company of its 6 per cent. preferred capital stock to the amount of \$15,000, par value, and for an approval of its first issue of preferred stock in the sum of \$15,000, made prior to March 23, 1912, and a hearing having been duly held upon said application, and the Commission finding that the purposes for which said stock is to be issued and approved are not in whole or in part reasonably chargeable to operating expenses or to income,

*It is hereby ordered* that Central California Gas Company be and the same is hereby authorized to issue its 6 per cent. preferred stock to the amount of \$12,500, par value, and the issue by said company of preferred stock in the par value of \$15,000 heretofore issued to General Operating and Construction Company is hereby approved, on the following conditions and not otherwise, to wit:

1. Central California Gas Company shall sell said preferred stock so as to net said company not less than 80 per cent. of the par value thereof.

2. The proceeds from the sale of such stock shall be applied only to the following purposes, that is to say: for the payment in full of all the expenses of organizing and promoting said Central California Gas Company, the items of expenditure being set out in the opinion which precedes this order.

3. Central California Gas Company shall henceforth be charged with no organization or promotion expenses other than those which are to be paid by the issue of the stock hereby authorized. If additional organization or promotion expenses arise, they shall be considered as included in the organization and promotion expenses and fees provided for in this order.

4. Central California Gas Company shall keep separate, true and accurate accounts, showing the receipt and application in detail of the proceeds of the sale of capital stock hereby authorized to be issued, and on or before the twenty-fifth day of each month the company shall make verified reports to the Commission, stating the sale of said capital stock during the previous month, the terms and conditions of sale, the moneys realized therefrom and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which, in so far as applicable, is made a part of this order.

5. The authority hereby given to issue such capital stock shall apply only to capital stock issued by Central California Gas Company on or before the thirtieth day of June, 1913.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this thirtieth day of January, 1913.

IN THE MATTER OF THE APPLICATION OF FARMERS' WAREHOUSE COMPANY FOR AN ORDER AUTHORIZING THE APPLICANT TO ISSUE SIX HUNDRED AND SIXTY-FIVE SHARES OF ITS CAPITAL STOCK AT PAR AND CONFIRMING THE ACTION OF SAID COMPANY TAKEN JULY 1, 1912, PURPORTING TO ISSUE SAID STOCK.

Application No. 311—Decision No. 430.

*Decided January 30, 1913.*

**Combination of Private Business with Public Utility Business—  
Construction of Section 52 of Public Utilities Act—Validation of Stock Issued for Private Business. [Ed.]**

Applicant is engaged in a business which is partly public utility and partly private. As a merchant, it uses its free capital in the buying of produce which is thereafter sold at a profit, at which time the capital invested in such produce is released and again becomes available for subsequent similar investments. The capital stock for which approval of issue is sought was actually issued July 1, 1912, without the consent of the Commission and sold at par for cash. The proceeds from the sale are intact and represented either by cash on hand or property which is held for sale, and are now desired to be used in the merchandise part of the business.

A strict construction of section 52 of the Public Utilities Act would prevent a combination of a private business and a public utility business under one corporate ownership, for if it is held that compliance with the statute only permits such enterprise to acquire money from stocks or bonds for the public utility purposes contemplated by the statute, such construction will make it impossible for a private business to be carried on. A reasonable construction of the statute will permit, even in the case of bonds, a disposition of the proceeds of sales of such bonds of companies such as the applicant for purposes which are not public utility purposes. The utility portion of the business should not, of course, be burdened with an unreasonable part of the expense of the entire business, and it should likewise be accorded all of the revenue which is properly the result of the public utility business. If this be done, so far as stock issues are concerned at least, it would seem that the spirit of the Public Utilities Act would not be departed from by sanctioning an issue of stock such as the one here considered without requiring the proceeds of such stock to be devoted to public utility purposes.

*Held*, that the application be granted and that the proceeds from the sale of the capital stock be used in the general business of applicant and in accord with any of the purposes for which such proceeds may be used under the terms of its articles of incorporation, except for public utility purposes; *held*, such authorization is not to be construed as meaning that when proceeds of sales of stock of such corporations are desired to be used in the public utility part of the business, that use of such proceeds is not restricted to the purposes set out in the Public Utilities Act.

*George E. Farrand*, for applicant.

## REPORT.

*ESHLEMAN, Commissioner:*

The applicant herein is a corporation engaged in conducting a general warehouse and storage business, including milling, cleaning and grading, buying, selling and exchanging grain, farm products and other kinds of merchandise. It has a warehouse and milling plant at Huntington Beach, Sawtelle, and Los Angeles, and a warehouse and wharf at Hueneme, Ventura County, California. Under the provisions of its articles of incorporation it is empowered to perform both a public utility business of wharfinger and warehouseman and a private business of grain and produce merchant. Applicant's original articles of incorporation authorized a capital stock of \$50,000 divided into 500 shares of the par value of \$100 each. On May 6, 1910, the authorized capital stock was increased to \$150,000 divided into 1,500 shares of the par value of \$100 each. All of applicant's stock is common. Prior to the passage of the Public Utilities Act, 835 shares were issued and outstanding for which par had been received.

Applicant states that on July 1, 1912, "and prior to the actual knowledge by applicant that the Public Utilities Act of California had altered its right to issue stock as theretofore exercised by it," it issued the balance of its capital stock consisting of 665 shares. The stock was pro-rated among the stockholders of record on that date and sold to them at \$100 per share, and the company has received in cash therefor \$66,500. Applicant now asks that this Commission authorize it to issue the 665 shares of stock and confirm its action taken on July 1, 1912, in purporting to issue such stock.

There is no question in my mind that the transaction here under consideration should be approved by this Commission. This enterprise sold all of its stock at par and received cash therefor, which was all turned into the treasury of the company. The Commission certainly in the first instance would

approve such a proceeding under the facts herein stated, and such being the case there certainly would be no warrant for withholding approval of such an action on the part of the company made through mistake, as I am convinced was here the case. The prompt and voluntary application on the part of this company to this Commission is additional evidence of its good faith. The only difficulty, however, is in the disposition of the proceeds, and this is a difficulty which will be met where we are dealing with these hybrid organizations engaged in a business which is partly public utility and partly private. The Public Utilities Act (section 52b) provides that a public utility "may issue stock and stock certificates \* \* \* for the following purposes and no other, namely, for the acquisition of property, or for the construction, completion, extension or improvement of its facilities, or for the improvement or maintenance of its service, or for the discharge or lawful refunding of its obligations, or for the reimbursement of moneys actually expended from income or from any other moneys in the treasury of the public utility not secured by or obtained from the issue of stock or stock certificates or bonds, notes or other evidences of indebtedness of such public utility." This language of the statute, of course, has in contemplation a public utility business and has outlined the purposes for which the proceeds from stock may be used. In the case before us, however, the applicant in addition to being a public utility is a merchant, and as such merchant uses its free capital in the buying of produce which is thereafter to be sold at a profit, at which time the capital invested in such produce will be released and again available for subsequent similar investments. Such has been the disposition of the \$66,500 acquired from the sale of the capital stock. It has not been permanently invested but is now, according to the testimony in the case, entirely intact and represented either by cash on hand or property which is held for sale.

A strict construction of the section of the Public Utilities Act here in question would prevent a combination of a private business and a public utility business under one corporate ownership, for if we hold that compliance with the



statute only permits such enterprise to acquire money from stocks or bonds for the public utility purposes contemplated by the statute we, of course, will make it impossible for a private business to be carried on. I do not believe it is necessary to go as far as this, and that a reasonable construction of the statute will permit even in the case of bonds a disposition of the proceeds of sales of such bonds of companies such as the applicant, for purposes which are not public utility purposes. It is not, however, necessary to decide the bond question in this case, for here we are dealing merely with stocks, and the issue of such stocks does not, of course, create a lien against the property of the corporation while the issue of bonds may create a lien upon all the property both public utility and otherwise of the applicant. The primary purpose of the Public Utilities Act is to insure adequate service at reasonable rates by the utility. In order to bring about these results it is necessary to prevent overcapitalization or over-bonding, and likewise to prevent a diversion of funds of the utility to purposes foreign to the utility. If we grant that a corporation organized for utility and other purposes may devote the proceeds of stock to that part of its business which is not devoted to the public utility—and I do not see how we can escape this conclusion—it immediately appears that great care must be taken to prevent the burdening of the utility business in favor of the private business of the corporation. If, however, the property devoted to utility business can be segregated, as is the case here, when rates are to be considered and a determination had of the value of such property for rate fixing purposes, it would seem that the matter of financing of the entire enterprise becomes immaterial so long as such financial operation does not endanger the solvency or unduly burden the entire business. The utility portion of the business should not, of course, be burdened with an unreasonable part of the expense of the entire business, and it should likewise be accorded all of the revenue which is properly the result of the public utility business. If this be done, so far as stock issues are concerned at least, it would seem that the spirit of the Public Utilities Act would not be departed from by sanction-

ing an issue of stock such as the one here considered without requiring the proceeds of such stock to be devoted to public utility purposes. As I have already said, if this may not be done then these joint enterprises can not continue to operate, which latter result in some cases might be desirable, but in many is not, for many small utilities operate advantageously in conjunction with other kinds of business, the same facilities and the same employees being used jointly and so more economically for the two kinds of business. Of course, in authorizing this action by this corporation and holding that such a utility may devote the proceeds of stocks to that portion of its business that is not a utility, we should not be understood as holding that when proceeds of sales of stock of such corporations are desired to be used in the public utility part of the business that use of such proceeds is not restricted to the purposes set out in the Public Utilities Act. If, in the present case, this applicant should desire to devote any of the proceeds of this stock issue to purely public utility purposes, this Commission would be required under the law, to restrict such proceeds to the purposes set out in the Public Utilities Act. I, therefore, recommend that the application be granted and that the disposition of the proceeds as herein outlined be approved.

In this particular case the applicant has signified its intention of dividing its business so as to operate the utility business separately. We believe that such a plan is desirable, particularly where the utility feature of the business is of sufficient magnitude to allow it to be carried on as a separate business without excessive cost of operation.

When the plan of reorganization is presented to this Commission, the affairs of the company should be scrutinized to the end that the utility business shall not be burdened for the benefit of the private business.

I submit the following form or order:

#### ORDER.

Farmers' Warehouse Company having applied to this Commission for an order authorizing it to issue 665 shares of its

capital stock, said stock to be sold at par in accordance with arrangements heretofore perfected in a purported issue of said stock, and a hearing having been held, and being fully advised in the premises.

*It is hereby ordered* that applicant be permitted to issue 665 shares of its capital stock and to sell the same at par, the proceeds thereof to be used in the general business of said applicant and in accord with any of the purposes for which such proceeds may be used under the terms of the articles of incorporation of said applicant except for public utility purposes.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this thirtieth day of January, 1913.

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**IN THE MATTER OF THE APPLICATION OF ARROWHEAD RESERVOIR AND POWER COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF FOUR MILLION DOLLARS BONDS.**

**Application No. 218—Decision No. 438.**

*Decided February 4, 1913.*

**Authorization of Bonds Refused—Value of Security Dependent Upon Disputed Title. [Ed.]**

Applicant asks approval to the issue of bonds and to the use of the proceeds thereof in completing the development and construction of a water system. Suits are now pending in the courts attacking the claims of applicant herein to the water of the Mojave River, said water being embraced within applicant's development scheme. *Held*, If said suits be determined adversely to applicant such determination will destroy the usefulness of its property. Under such circumstances, the Commission would not be justified in authorizing the issue of securities which will be a lien upon property of a corporation which property may or may not have value, dependent upon the determination of another tribunal. Application denied without prejudice.\*

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\*Syllabus prepared by the Commission.

IN THE MATTER OF THE APPLICATION OF UNITED RAILROADS OF SAN FRANCISCO FOR PERMISSION TO ISSUE AND SELL TWO MILLION THREE HUNDRED AND FIFTY THOUSAND DOLLARS SIX PER CENT. FIVE-YEAR NOTES, THE PROCEEDS FROM THE SALE OF WHICH ARE TO BE APPLIED TOWARD THE PAYMENT AND DISCHARGE OF THREE MILLION DOLLARS OF THE SIX PER CENT BONDS OF THE MARKET STREET CABLE RAILWAY COMPANY AND THREE HUNDRED AND FIFTY THOUSAND DOLLARS OF THE SIX PER CENT BONDS OF THE PARK AND CLIFF HOUSE RAILWAY COMPANY, BOTH BOND ISSUES MATURING JANUARY 1, 1913.

Application No. 283—Decision No. 439.

*Decided February 4, 1913.*

**Authorization of Note Issue Refused—Financial Mismanagement by Applicant—Protection of Security Holders—Examination of Applicant's Books. [Ed.]**

Applicant asks for an order permitting it to issue and sell at 95 per cent. five-year 6 per cent. promissory notes in the amount of \$2,350,000, and to use the proceeds, together with applicant's sinking fund, stated to amount to \$1,200,000, to pay off \$3,000,000 face value of Market Street Cable Railway Company bonds and \$350,000 face value of Park and Cliff House Railway Company bonds, said promissory notes to be secured by pledge of \$2,150,000 face value of Market Street Railway Company bonds. Authority is asked in Application No. 284 for approval of issue of said bonds as collateral. The proceedings in these two applications were consolidated. Applicant failed to produce its books as required, but, in lieu thereof, offered statements made by auditors, which statements were alleged to have been compiled from the books, but which consisted of totals only and gave no details of how the totals were secured.

The Commission, through its auditing department, carefully examined the partial information furnished by applicant and not including the original books prior to the year 1912, and from such examination reached the following conclusions with reference to applicant's financial condition as bearing on this application:

1. That the provisions of applicant's trust deeds with reference to the establishment of sinking fund reserves have not been complied with.
2. That the United Railroads has exchanged with its owners their own promises to pay and has set them up in an account as sinking fund investments.
3. That a fictitious surplus or profit and loss account had been created.
4. That dividends have been paid out of such fictitious surplus to the detriment of the equity supporting the bonds.

5. That instead of setting up a heavy reserve to aid in retiring bonds which it now seems the company will be unable to pay at maturity, the company is continuing to pay out dividends.

In some cases in which the condition of a public utility at and prior to March 23, 1912, has not been such as would have been sanctioned by this Commission had it been empowered to pass upon the utility's securities, the Commission has nevertheless authorized the issue of new securities, but only in cases in which the issue of such new securities will not cast additional burdens upon the utility and in which the utility is not bankrupt. The Commission will not authorize the issue of additional securities in the two exceptions specified, for the reason that it is obvious that to permit the issuance of new securities by a utility which inevitably must be reorganized or go into the hands of a receiver will only result in loss to the people who invest in these securities. Having this policy in view, the Commission insisted upon being fully advised as to the applicant's financial condition. If an examination of the original books which the company has refused to supply should reveal a different condition from that stated, the responsibility for the above conclusions, which inevitably must be drawn from the evidence secured, lies with the applicant because of its failure to submit its books for examination by the Commission.\* The evidence offered by applicant reviewed.

*Held*, That the application should be denied and that no favorable action will be taken by the Commission on any application presented by the United Railroads or its subsidiaries until the information demanded by the Commission has been furnished.\*

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STEPHEN A. D. CLARK, E. C. AUCHMOODY, JOHN B. JORDAN,  
JOSEPH L. HALE, R. W. WRIGHT, AND LAVINDA YENDES  
*vs.* HERMOSA BEACH WATER COMPANY AND QUINTIN J.  
ROWLEY.

Case No. 287—Decision No. 441.

*Decided February 4, 1913.*

**Extension of Service—Burden of Cost—Classification of Consumers—Extraordinarily Expensive Service. *Rd.***

Defendant Rowley purchased and subdivided certain land for sale as building lots. Defendant water company contracted with Rowley to deliver stated quantities of water for distribution upon said lands. The distribution mains upon the lands were laid by Rowley, who sold the lots with an agreement to supply the purchasers with water for irrigation and domestic purposes at a specified rate, it being stipulated in the agreements that Rowley would not be responsible for any failure of the water company to perform its contract. The water company discontinued delivery of water to Rowley and thereafter delivered directly to the consumers upon said lands, through the system installed, at its standard rates. Subsequently thirty-one lots belong-

Syllabus prepared by the Commission.

ing to one of the complainants were disconnected by the water company from the main running in front of said lots. The water company offered at the hearing to restore these connections free of cost. Complainants, alleging that defendants had failed to supply an adequate quantity of water, petitioned for relief.

*Held*, It is the duty of a public utility to furnish to the limit of its facilities all people properly reachable under its system and this without regard to the question of whether or not each proposed connection will or will not be profitable, and provided the system as a whole, with an additional connection or connections, produces to the owners of the utility a reasonable return upon the value of the property. Just where to draw the line between an unreasonably expensive installation and service and one which is reasonable is a very nice question and must be decided on the circumstances in each case. An extraordinarily expensive service demanded by a consumer, if provided at the same rates usually applied, would result in burdening the persons who take the service under normal conditions with an additional expense resulting from the unusual location or condition of the person demanding the service.

*Held*, Under ordinary circumstances, this Commission might refuse to compel the connection of vacant property with water mains, but, in view of the agreement of the water company to restore connections destroyed by it and as such connections may be of some advantage to complainant owning said property, the agreement on the part of the company should be carried out.

*Held*, That defendant water company should be compelled to furnish an adequate supply of water under proper pressure in the so-called gravity line to enable complainants to obtain a steady and reliable supply.

*Charles M. Ackerman*, for complainants.

*S. M. Haskins and Gibson, Dunn and Crutcher*, for defendants, Hermosa Beach Water Company.

*Lewis and O'Connor*, for defendant, Quintin J. Rowley.

## REPORT.

*EDGERTON, Commissioner:*

By this action it is sought to obtain an order of the Commission compelling the defendants to furnish complainants with an adequate supply of water for domestic and irrigating purposes. It is alleged that defendant, Hermosa Beach Water Company, is a public utility owning and operating a water producing and distributing plant, which furnishes water to the citizens of Hermosa Beach, Manhattan Beach and territory in the vicinity of these two places. It is alleged

that defendant, Rowley, is a public utility, that he does not own a plant, but through contracts made with the Hermosa Beach Water Company and complainants, he is obligated to supply complainants with an adequate water service.

Defendant, Rowley, purchased land and subdivided it into building lots, some of which are now owned by complainants who reside thereon, and the demand is made that water be furnished in adequate amount to these lots. In 1905, Rowley made a contract with the Hermosa Beach Water Company, in which it was provided that there should be delivered to him not less than 130,000 gallons of water per month and not more than 1,800,000 gallons per month, the water to be delivered at a point on the north boundary line of the second addition to Hermosa Beach. This point of delivery was below the level of the property of Dr. Rowley, and as the bottom of the reservoir of the water company was below the level of said lands, water would not flow from said reservoir to said lands by gravity and Rowley installed a small windmill, pump and tank and pumped from the mains of the Hermosa Beach Water Company into this tank, from which his property was served. Rowley laid mains and connected each lot in his tract therewith and furnished water to the people who purchased his lots in the manner just above described. He made contracts with the purchasers of these lots, under which he agreed to furnish them water for domestic and irrigating purposes for the price of 7 1-2 cents per thousand gallons, but it was expressly stipulated in these contracts that Rowley would not be responsible for any failure of the Hermosa Beach Water Company to fulfill its contract with him for the delivery of water.

Rowley disclaims any ownership or interest in the mains and connections made therewith, and declares that in effect he has dedicated such mains and connections to the owners of lots in his tract.

About July of 1911, the windmill blew down and since then water has been pumped with a small gasoline engine from the gravity line of the water company to complainants. It does not appear who owns this engine and pump as all parties to the action disclaim having purchased or installed it. It has

been, and is being, operated by and at the expense of complainants. The land upon which it stands is now owned by complainant Clark. On July 13, 1911, the water company notified Rowley, in writing, that the company would thereafter discontinue furnishing water to him under the agreement of date February 21, 1905, and thereupon, the water company turned off the water. Then the company turned on the water and collected from the individual consumers the standard rate for water charged over its system.

The water company thereby assumed direct public utility relations with complainants by furnishing them with water and charging and collecting rates directly from them as individuals. We will now consider the relations, the duties and the obligations of the Hermosa Beach Water Company as a public utility which has served water under certain conditions for the use of complainants for a period of over a year last past.

The broad question presented in this matter is, what is the duty and obligation of the Hermosa Beach Water Company to furnish an adequate supply of water to complainants, taking into consideration the rates charged for the service now furnished and the extent to which this company should be compelled to furnish water to consumers wherever situated.

If it appeared in this case that the water company had agreed to furnish complainants with an adequate supply of water at their property, such an agreement would be considered by this Commission as prima facie evidence of the reasonableness and propriety of such service being furnished, and would insist upon its continuance; or had the company at any time furnished an adequate supply of water directly to complainants, such act of the company would be considered in the same light. But it does not appear from the evidence in this case that the company has ever furnished water to complainants, except as it is now being furnished, to wit: in the gravity pipe line from which complainants pump the water to their premises at their own expense. Nor does it appear that the company ever contracted to do more than this.



Hence, the matter to be decided by this Commission is: Viewing the situation as a whole and considering the rights of all the customers supplied by this water company, should the company be compelled to perform the unusual and expensive service demanded by complainants at the standard or regular rates charged by the company to all its consumers. Or whether if it be found to be the duty of the water company to furnish the complainants with an adequate supply of water, should the additional expense of installing such service and operating same be borne by complainants, or be taxed against all of the consumers of the water company.

It is the duty of a public utility to furnish to the limit of its facilities all people properly reachable under its system, and this without regard to the question of whether or not each proposed connection will, or will not, be profitable, provided the system as a whole, with the additional connection, or connections, produces to the owners of the utility a reasonable return upon the value of the property.

Strictly speaking, each consumer of the utility should bear the additional burden his service costs above that of the least expensive service, but to apply this doctrine would result in myriads of different rates and would result, in the judgment of this Commission, in greater difficulties and injustices than to apply the rule that within reasonable bounds all users of a service of a given utility should be supplied with that service at the same rate, taking into consideration, of course, the propriety in certain cases of establishing classes by way of large and small consumers, etc. This latter doctrine, however, must be modified to the extent that an extraordinary expensive service demanded by a consumer if provided at the same rates usually applied would result in burdening the persons who take the service under normal conditions with the additional expense resulting from the unusual location or condition of the person demanding the service.

To illustrate: if a utility were operating in a valley and was providing water by gravity flow to people in the valley and the utility were compelled to install a service at the top of a mountain, the expense of which installation and the cost of producing the service was twice the cost and expense on

the rest of the system, manifestly, to charge this consumer on the top of the mountain the same rate as is charged in the valley would result in the necessity of tremendously increasing the rate in the valley in order to take care of the loss suffered in the service to the mountain top.

Just where to draw the line between an unreasonably expensive installation and service and one which is reasonable, is a very nice question, and must be decided on the circumstances in each case.

In some instances it may be that finding the utility deriving more than a reasonable profit or return on the value of its property, the additional and expensive service should be ordered in on the ground that it will not reduce the profits of the utility below a reasonable amount. On the other hand, it should be borne in mind that instead of adding the new and costly service, and thus reducing the profits of the utility, justice might require that the rates to all of the consumers of the utility should be reduced.

It appears that the location of complainants is not the only one adjacent to the water system of the water company which is upon an elevation, and if this Commission ordered this utility company to provide complainants with water, it would leave the way open for a demand by the owners of all the elevated lands within reasonable distance of this water system to demand the same privileges, and with all these possible requests granted, it would unquestionably either seriously embarrass the finances of the company or else the present consumers would have to bear a very large additional burden in order that these new locations might be furnished with water.

It is altogether probable that the value of these locations on hills where it would be expensive to provide water has been decreased by this very fact, and, therefore, it seems reasonable to conclude that the purchasers of these elevated sites obtained their property for less than they would have done had water been readily available.

The water company, however, has unquestionably assumed the obligation of furnishing water in the gravity pipe line, and this service should be furnished in sufficient amount and

pressure to enable applicants to pump an adequate supply of water.

It appears from the uncontradicted testimony of complainant Clark, that subsequent to the filing of the complaint herein, thirty-one lots belonging to Clark were disconnected by the water company from the main running in front of said lots, and on behalf of the water company Mr. Crutcher offered at the hearing to restore these connections free of cost.

Under ordinary circumstances this Commission might refuse to compel the connection of vacant property with water mains, but in view of the agreement of the water company to restore connections destroyed by it, and as such connections may be of some advantage to Clark, the agreement on the part of the company should be carried out.

The evidence in this case shows that defendant, Hermosa Beach Water Company, has not been furnishing an adequate supply of water under proper pressure in the so-called gravity line to enable complainants to obtain a steady and reliable supply. This the water company should be compelled to do.

Nothing in this opinion shall be construed as limiting in any way the duty of a water utility to construct mains and make service connections within the territory which it holds itself out as serving or such territory as it is under legal obligations to serve.

I recommend the following form of order:

#### ORDER.

The complainants herein having filed their complaint against defendants, Hermosa Beach Water Company and Quintin J. Rowley, and the defendants having answered said complaint and a hearing having been held, and the Commission being fully informed in the premises, and basing its findings and conclusions upon the findings and matter set out in the opinion herein,

The Railroad Commission of the State of California hereby finds as a fact that Hermosa Beach Water Company is a public utility, obligated to furnish complainants herein with

an adequate supply of water at proper pressure in the gravity line from which complainants are now obtaining water; and that said Hermosa Beach Water Company did remove water connections connecting the following lots belonging to complainant Clark, to wit: Lots 12, 13, 14, 15, 16, 17, 20, 21, 22, 24 and 25 in Block Eight; Lots 21, 22, 23 and 24 in Block Five; Lots 10, 11 and 12 in Block Six, and all of Block Nine, Carnation Villa Tract, in the county of Los Angeles, and that said water company has agreed to restore said connections free of cost.

*It is hereby ordered* that the Hermosa Beach Water Company furnish in the mains from which complainants now obtain their water, an adequate supply of water at a pressure at all times of not less than 20 pounds per square inch, said company to begin giving said service within a period of sixty days from the date of this order, and

*It is further ordered* that said Hermosa Beach Water Company restore the service connections to the lots herein above in this order described, and that said connections be restored within a period of thirty days from the date of this order.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 4th day of February, 1913.

**IN THE MATTER OF THE APPLICATION OF CENTRAL PACIFIC RAILWAY COMPANY, SOUTHERN PACIFIC RAILROAD COMPANY AND SOUTHERN PACIFIC COMPANY FOR AUTHORIZATION TO MAKE A LEASE OF A CERTAIN RAILROAD; TO MAKE A SALE OF A CERTAIN RAILROAD; TO MAKE A CONTRACT FOR THE JOINT USE AND POSSESSION OF A CERTAIN RAILROAD; TO MAKE A CONTRACT FOR RUNNING AND TRACKAGE RIGHTS OVER A CERTAIN RAILROAD; AND TO MAKE A CONTRACT FOR THE JOINT USE OF CERTAIN RAILROAD TERMINALS.\***

Application No. 409—Decision No. 477.

*Decided February 24, 1913.*

**Sale and Lease of Railroad Property—Jurisdiction of Commission—Interstate and Intrastate Competition—One Agency Within the State Preferable to Two—Long Term Leases Objectionable—Valuation for Sale or Lease Subject to Approval of Commission—Maintenance of Present Rates—Discrimination Between Competing Railroads in Extending Joint Use of Facilities. [Ed.]**

Heretofore, the Southern Pacific Company secured all of the capital stock of the Central Pacific Railway Company, Central Pacific Railroad Company, Southern Pacific Railroad Company and various other lines of railway within the States of California, Nevada, Utah, Arizona, and New Mexico, by which ownership it secured control of a line of railroad from El Paso to San Francisco and from Ogden to San Francisco. Thereafter, the Union Pacific, owning and operating a railroad between Omaha and Ogden, acquired 46 per cent. of the capital stock of the Southern Pacific Company. The Supreme Court of the United States, in the matter of *United States vs. Union Pacific Railroad Company, Southern Pacific Company*, et al, having held, December 2, 1912, that such stock ownership or dominance by the same agency, to wit, the Union Pacific, of two competing transcontinental lines constituted a combination in restraint of trade in violation of the Sherman anti-trust act, directed the Union Pacific to divest itself of its ownership of said Southern Pacific stock amounting, par value to \$126,650,000, and further provided that its decree should not prevent "the Central Pacific connection from Ogden to San Francisco and thereby to control that line to the coast, thus affecting such a continuance of the Union Pacific and Central Pacific as is contemplated by the Acts of Congress under which they were constructed."

The said respective companies thereupon entered into an agreement which contemplates: (1st) the sale by the Union Pacific of the stock of the Southern Pacific; (2d) the sale by the Southern Pacific to the Union Pacific of

\*A supplemental opinion in this case is printed at page 585.

the Central Pacific stock held by the Southern Pacific; (3d) the cancellation of the leases of the Central Pacific and allied lines held by the Southern Pacific; (4th) the lease for 999 years by the Central Pacific of its lines of railroad from Tehama, California, to the Oregon line to the Southern Pacific Railroad Company at an annual rental of 5 per cent. upon the value of such line from Tehama to the Oregon line, the value to be agreed upon by the parties, if possible, and, if not, to be determined by arbitration according to the method laid down in the agreement; (5th) the sale by the Central Pacific to the Southern Pacific Railroad Company of the line of railroad now partly completed from Weed, in Siskiyou County, California, to Natron, Oregon, at a valuation to be determined in manner above described; (6th) the lease, for 999 years, by the Southern Pacific Railroad Company and the Southern Pacific to the Central Pacific of trackage and running rights over the lines of the former companies between Redwood City and San Francisco for through freight trains only at an annual rental of 5 per cent. upon the valuation to be determined in manner as above described; (7th) the lease for 999 years by the Southern Pacific and the Southern Pacific Railroad Company to the Central Pacific of its line of railroad from Sacramento by way of Benicia to Oakland at an annual rental of 2½ per cent. upon the value of said line to be determined in the manner above described; said lease to give to the lessee an equal joint use with the Southern Pacific Company of said line and no other line is to be admitted to said use without the permission of said Central Pacific; (8th) the lease, for 999 years, by the Southern Pacific and Central Pacific to one another of the joint use of their respective terminals, including industry tracks, at all junctions of their respective lines within city limits.

Said agreement was submitted to this Commission for approval in respect to such provisions thereof over which the Commission has jurisdiction. The Western Pacific Railway Company appeared in opposition.

*Held*, While this Commission has no authority over the sales of capital stock required and contemplated to be made, the entire plan should be considered with a view of determining whether or not the entire plan, which must be accepted or rejected under the circumstances presented, is one designed to bring about in good faith the result contemplated by the mandate of the Supreme Court, to wit, to produce active and actual competition between these two transcontinental lines.

Accordingly, the effect of the consummation of the plan upon interstate shipments and intrastate traffic discussed. At the present time, the local lines of the Southern Pacific and the Central Pacific form one system within this State, reaching from Oregon to the Mexican line, and from Yuma and a point near Reno on the east. All local lines of these two systems are now under the control of one agency and operated as a unit. The result of the reorganization plan, as set forth in the agreement, will be the substitution as to a greater part of this territory of two agencies to perform the work now performed by one. The opinion expressed, on grounds stated, that it would be better for the local business within this State if the local lines now controlled by the Southern Pacific could remain under the control of one agency and not be separated and given over to the control of two. This conclusion, in conjunction with the opinion that the advantage of shippers as to transcontinental freight will be negligible if the provisions of the agreement are carried out, leads to the suggestion that, in bringing about the design of Congress that the Central Pacific and the Union Pacific should be one con-

tinuous transcontinental line, it would be better to accomplish such result by the sale to or long term lease by the Union Pacific of the line of the Central Pacific from Ogden to Sacramento and thence via Stockton, Niles and Oakland to San Francisco, being a portion of the continuous line referred to in 18 Statutes at Large, page 111, Chapter 331 (June 20, 1874), instead of, as proposed, by the sale of the stock of the Central Pacific by the Southern Pacific, such sale not being required in the said decree of the Supreme Court.

*Held*, With respect to the proposed method of determining values, this Commission has heretofore held that, in cases involving the sale by a public utility of any portion of its property devoted to the public use, or the rental of such property, the valuation shall be subject to the Commission's approval, and there is no reason for departing from this principle in this case.

*Held*, With respect to the proposed 999 year leases, constituting practically leases in perpetuity, except in those cases where approval would be given to a sale of the property and a sale is only prevented by the outstanding obligations which are liens upon the property, a perpetual lease is not warranted; that the leases under consideration may run for a period of fifty years and for a further period until the Commission or other competent State authority, after notice and hearing, directs their cancellation or modification, whereupon such cancellation or modification shall be made.

*Held*, With respect to the lease of the Benicia Short Line and the joint use of terminals, including industry tracks, that the grant by the owner of the use of such tracks or facilities to one independent competitor (the Central Pacific), while refusing to grant the same rights to another independent competitor, would work a discrimination which the welfare of this State does not permit and which the Commission will not sanction. If such owner is going to throw its property open to one of its several independent competitors, it must play fair with the others and permit its use by them also, on terms which shall provide for a just compensation, to the extent to which the capacity of the property reasonably permits. While there is some argument in favor of the joint use of certain terminals by the Southern and Central Pacific to the exclusion of other lines, particularly as affects such a terminal as the Oakland Pier, still, under all the circumstances of this case, the provision is not justified that only by the joint approval of these companies are these terminals, including industry tracks, as the agreement is interpreted, to be used by any other company.

Application granted, express conditions being imposed based upon the above findings.

*McCutchen, Olney and Willard and W. W. Cotton*, for Central Pacific Railway Company.

*Wm. F. Herrin and Guy V. Shoup*, for Southern Pacific Company and Southern Pacific Railroad Company.

*Chas. S. Wheeler and Allan P. Matthew*, for Western Pacific Railway Company.

*Robert T. McKisick*, City Attorney, for City of Sacramento.

*Ben F. Woolner*, City Attorney, for City of Oakland.

*Seth Mann*, for San Francisco Chamber of Commerce.

## REPORT.

On February 17, 1913, the railroads herein mentioned applied to this Commission for its approval of five certain proposed transactions hereinafter more specifically referred to. On the second day of December, 1912, the Supreme Court of the United States, in the case of *United States vs. Union Pacific Railroad Company, Southern Pacific Company et al.*, rendered a decision declaring the ownership by said Union Pacific Railroad Company (hereinafter referred to as the Union Pacific) of certain shares of the capital stock of the Southern Pacific Company (hereinafter referred to as the Southern Pacific) to be a combination in restraint of trade and decreeing that said Union Pacific should dispose of said stock of the Southern Pacific, and likewise providing for an injunction against the voting of the stock of the Southern Pacific by the Union Pacific and prohibiting the payment of any dividends upon said stock of the Southern Pacific.

In order to better understand the issues before this Commission a brief review of the history of this case is advisable.

Heretofore the Southern Pacific had secured all of the stock of the Central Pacific Railway Company (hereinafter referred to as the Central Pacific), Central Pacific Railroad Company, Southern Pacific Railroad Company and various other lines of railway within the states of California, Nevada, Utah, Arizona, and New Mexico, by which ownership the said Southern Pacific secured control of a line of railroad from El Paso to San Francisco and from Ogden to San Francisco. Thereafter the Union Pacific, by securing control of 46 per cent. of the stock of the Southern Pacific, secured what amounted to actual control of the Southern Pacific, thereby placing the Union Pacific in a position so that at the time of the bringing of the suit in question it had actual control of a line of railroad from Omaha to San Francisco, comprising the lines of the Union Pacific and the Central Pacific, a second line of railroad from El Paso to San Francisco, operated by the Southern Pacific, a third line of railroad from Salt Lake to Los Angeles, operated by the San Pedro, Los Angeles and Salt Lake Railway Company, and a fourth line of railroad



from Granger, Wyoming, and Ogden, Utah, to Portland, Oregon, including all of the lines heretofore described.

The Supreme Court of the United States, in the case of *United States of America vs. Union Pacific Railroad Company*, heretofore referred to, held that the dominance by the Union Pacific of the lines of the Southern Pacific constituting the so-called Sunset route from El Paso to San Francisco, and the route from Ogden to San Francisco, brought about the ownership or dominance by the same agency of two competing transcontinental lines, thereby bringing about a combination in restraint of trade, in violation of the so-called Sherman anti-trust act. As has already been said, the court decided that to destroy such combination the Union Pacific should divest itself of its ownership of Southern Pacific stock, amounting to the aggregate amount of \$126,650,000 par value.

In accordance with such decision, the various companies have agreed upon a certain agreement (hereinafter referred to as the agreement) which has been filed with this Commission, and in part approved by the Attorney General of the United States. This agreement, in addition to providing for the sale of the stock of the Southern Pacific held by the Union Pacific to the stockholders of the Union Pacific and the Southern Pacific in the proportion of one share of this stock owned by the Union Pacific to each four shares of Union Pacific stock, and one share of said Southern Pacific stock to each three shares of Southern Pacific stock owned by stockholders other than the Union Pacific, provides also for the sale by the Southern Pacific of the stock of the Central Pacific theretofore acquired by said Southern Pacific. This provision, the evidence shows, is the result of the suggestion of the Attorney General of the United States, he having apparently taken the position that the ownership by the Southern Pacific of the Central Pacific stock constitutes the same kind of prohibited act, under the Sherman anti-trust act, as the ownership by the Union Pacific of Southern Pacific stock brought about. Admittedly, however, the provision of the agreement requiring the sale of the stock of the Central Pacific by the Southern Pacific is in excess of the require-

ments of the decree of the Supreme Court of the United States. The only portion of that decree which relates at all to a relationship between the Union Pacific and the Central Pacific is that which provides that the decree shall not prevent "the Central Pacific connection from Ogden to San Francisco and thereby to control that line to the coast, thus affecting such a continuance of the Union Pacific and Central Pacific as is contemplated by the acts of Congress under which they were constructed." The acts of Congress referred to provide that the Central Pacific and the Union Pacific shall be operated and used for all purposes of communication, travel and transportation, so far as the public and government are concerned, as one connected continuous line (12 Statutes at Large, 489-495, enacted July 1, 1862), and to afford and secure to each equal advantages and facilities as to rates, time and transportation without any discrimination of any kind in favor of the road or business of any or either of said companies or adverse to the road or business of any or either of the others (31 Statutes at Large, 356, enacted July 2, 1864).

The only thing provided in the agreement which was in accordance with the positive admonition of the Supreme Court is the sale by the Union Pacific of the stock of the Southern Pacific. Everything else provided in the agreement is, in our judgment, in excess of the requirements of the Supreme Court; but it is presupposed in the agreement that the design of the Attorney General of the United States was to bring about at the same time the dissolution of the Southern Pacific and Union Pacific and the Southern Pacific and the Central Pacific in accordance with the suggestion of the Supreme Court hereinbefore referred to, which suggestion, however, went merely to an outlet for the Union Pacific over the lines of the Central Pacific to the coast, in accordance with the original plan of Congress as laid down in the statutes heretofore referred to, and did not in any way necessitate the sale by the Southern Pacific of all the Central Pacific feeders within this State.

The agreement presented to this Commission, a part of which requires the approval of this Commission and a part of which does not, contemplates:

*First*—The sale by the Union Pacific of the stock of the Southern Pacific heretofore referred to.

*Second*—The sale by the Southern Pacific to the Union Pacific of the Central Pacific stock held by the Southern Pacific.

*Third*—The cancellation of the leases of the Central Pacific and allied lines held by the Southern Pacific.

*Fourth*—The lease for 999 years by the Central Pacific of its line of railroad from Tehama, California, to the Oregon line, to the Southern Pacific Railroad Company at an annual rental of 5 per cent. upon the value of such line from Tehama to the Oregon line as determined by a method which will hereinafter be discussed.

*Fifth*—The sale by the Central Pacific to the Southern Pacific Railroad Company of the line of railroad, now partly completed, from Weed, in Siskiyou County, California, to Natron, Oregon, at a valuation to be determined as hereinafter provided.

*Sixth*—The lease for 999 years by the Southern Pacific and the Southern Pacific Railroad Company to the Central Pacific of its line of railroad from Sacramento by way of Benicia to Oakland at an annual rental of 2 1-2 per cent. upon the value of said line to be determined in a manner hereafter described. This lease is to give to the lessee an equal joint use with the Southern Pacific Company of said line and no other line is to be admitted to said use without the permission of said Central Pacific.

*Seventh*—The lease for 999 years by the Southern Pacific and Central Pacific to one another of the joint use of their respective terminals, including industry tracks, at all junctions of their respective lines within city limits.

*Eighth*—The lease for 999 years by the Southern Pacific Railroad Company and the Southern Pacific to the Central Pacific of trackage and running rights over the lines of the former companies between Redwood City and San Francisco, for through freight trains only, at an annual rental of 5 per cent. upon the valuation, to be determined as hereinafter set out.

The entire consideration for these various trades, aside

from the annual rental provided, is to be the assumption by the Union Pacific of approximately two hundred million dollars of bonded indebtedness of the Central Pacific and the payment to the Southern Pacific of about \$104,000,000.

We, of course, accept without question the mandate of the Supreme Court, and it is our desire to exercise whatever authority we have in this matter, in a manner which will bring about the design of the Supreme Court to produce active and actual competition between these two transcontinental lines. However, over the sale of the stock of the Southern Pacific by the Union Pacific as ordered by the Supreme Court, we, of course, have no authority. Neither have we power under the Public Utilities Act to require or to prevent the sale of the stock of the Central Pacific, one foreign corporation, by the Southern Pacific, another foreign corporation, as provided for in the plan of the Attorney General. However, the representatives of both the Union Pacific and the Southern Pacific have testified that this plan as presented in the agreement must be carried out without substantial change, and we feel that the entire plan is one which should be considered by us with a view to determining whether or not the entire plan which must be accepted or rejected under the circumstances herein presented, is one designed to bring about in good faith the result contemplated by the mandate of the Supreme Court.

We concede that the Attorney General in urging the sale of the Central Pacific stock by the Southern Pacific, merely has in mind the fact that by the control of the Central Pacific by the Southern Pacific, the latter company, a competing transcontinental line with the Union Pacific and Central Pacific, one transcontinental line under the design of Congress, is controlling a part of this transcontinental line and thereby is in directly the same position as regards the western or Central Pacific end of this line as the Union Pacific is with reference to the eastern or Union Pacific end thereof. That the elimination of this condition does not require the sale of the stock of the Central Pacific by the Southern Pacific is plain. This, of course, is but one method of bringing about the result desired by the Attorney General. It is

our opinion that this result could be equally well brought about by the sale to or long term lease by the Union Pacific of the line of the Central Pacific from Ogden to Sacramento and thence via Stockton, Niles and Oakland to San Francisco, being a portion of the continuous line referred to in 18 Statutes at Large, page 111, chapter 331 (June 20, 1874).

The plan presented to us in this agreement contemplates the control by the Union Pacific not only of a line to the coast, but also of many important feeders owned by the Central Pacific in northern and central California. As a matter of fact, the acquisition of the entire Central Pacific holdings by the Union Pacific will give it an entry into all of the important centers of population in California north of the Tehachapi Mountains, while its control by stock ownership of the San Pedro, Los Angeles and Salt Lake Railroad Company from Salt Lake to Los Angeles, with the connections of the Oregon Short Line from Salt Lake to Ogden, gives it an entry into the region south of the Tehachapi Mountains, and its ownership of the Oregon Short Line and the Oregon Railway and Navigation Company gives it access to Portland and other Oregon points. The Southern Pacific, on the other hand, while it is left with its Coast line from San Francisco to Los Angeles, will, in our opinion, if this agreement is consummated, compete at a disadvantage at all points north of the Tehachapi Mountains with the Union Pacific-Central Pacific line. In fact, it is in evidence in this case from the testimony of the representatives of the Southern Pacific itself, that that line will be excluded from practically all of the deciduous fruit business in California, as well as a major portion of the dried fruit business and a large portion of the citrus fruit business originating at points north of the Tehachapi Mountains.

We do not believe it necessary to the determination of the questions that are now presented to us to present in detail the traffic conditions which we consider will be brought about if the rearrangement contemplated by this agreement is consummated. Mr. Sproule, president of the Southern Pacific, testified that 47 per cent. of the traffic carried by the Southern Pacific as it now exists, controlling as it does the Central

Pacific to Ogden, passes through the El Paso gateway. This, of course, includes practically all the Southern Pacific's traffic originating south of the Tehachapi Mountains and all of the traffic moving by water from Galveston over the Southern Pacific and Gulf line, and necessarily includes but a small percentage of the business produced north of the Tehachapi Mountains. Under present conditions, the Southern Pacific, having regard solely to traffic convenience, carries by way of its Sunset route only a comparatively small amount of freight which originates at points north of the Tehachapi Mountains. It would appear that under the circumstances of this case, the traffic will largely move over the most convenient and expeditious route. Such being the case, we are justified in concluding that for most of the traffic originating north of the Tehachapi Mountains, the Sunset route is a less convenient route than the route by way of Ogden gateway, and if this conclusion is correct, the Southern Pacific will compete at a disadvantage for most of this traffic when the ownership of the lines through the Ogden gateway and the El Paso gateway is in the hands of competing owners. Thus, if the Union Pacific secures control of the Central Pacific with its feeders as far south as Goshen and into practically all of the important commercial centers in northern and central California, the Southern Pacific will be placed in the position of the inferior road at all of these points, while if the Union Pacific were to secure merely the control of the main line of the Central Pacific from Ogden to San Francisco, the condition would be reversed and the Union Pacific-Central Pacific line would compete at a disadvantage or be compelled to build additional feeders.

We do not pretend to say, nor do we consider it necessary to decide, how serious an impairment of the Southern Pacific will be brought about by the securing of the Central Pacific main line and feeders by the Union Pacific, but we are of the opinion that the present commanding position of that road cannot be maintained under the contract which is presented to us for approval, and that there is room for grave fear that if the agreement is carried out this State will, instead of securing two strong competing lines, secure one dominant line and one much impaired line.

The desire of the Supreme Court and the Attorney General to produce active competition between these two transcontinental lines, of course, is founded in the belief that such competition will produce advantageous results to the shippers. We do not believe, however, that any appreciable reduction of transcontinental rates will be brought about by the unmerging of these lines, particularly under the terms of the agreement here under consideration. If, however, active and bona fide competition is produced between these lines there will be more striving after business and, consequently, probably some improvement in service, how great it is impossible to determine. We do not believe that the improvement in service will be very marked, because of the fact that the freight east and west through both the Ogden and El Paso gateways is at the present time carried in active competition with two other transcontinental lines, namely, the Atchison, Topeka and Santa Fe Railway Company and Western Pacific Railway Company.

Believing as we do that the plan here under consideration will not substantially benefit the shippers of transcontinental freight, either in rates or in service, it is well to consider what, if any, effect will be the natural result of this arrangement upon local traffic. At the present time, the local lines of the Southern Pacific and the Central Pacific form one system within this State, reaching from Oregon to the Mexican line, and from Yuma and a point near Reno on the east. All local lines of these two systems are now under the control of one agency and operated as a unit. The result of the reorganization plan as set forth in this agreement will be the substitution as to a great part of this territory of two agencies to perform the work now performed by one.

While the representatives of both the Union Pacific and the Southern Pacific state positively that it is contrary to their policy to permit the reorganization scheme to increase the rates or to interfere with the service locally within the State, yet we cannot refrain from observing that this result usually follows upon a substitution of two agencies in the performance of a service theretofore performed by one. We invariably have it urged upon us in rate controversies before

the Commission, where rates are to be made over two connecting lines that the joint movement over two connecting lines is more expensive to the carriers in the aggregate than a single movement over one line between the same points. Therefore, regardless of the present disposition of the parties hereto, we feel that serious consideration must be given by the Commission to the possibility or probability of applications which may hereafter be made by carriers to increase rates in this State in cases where, as the result of the consummation of this agreement, points now upon one line may, by reason of the dismemberment of the Southern Pacific lines in this State be found located one solely on the Southern Pacific and the other solely on the Central Pacific.

It is our disposition to believe that it would be better for the local business within this State if the local lines now controlled by the Southern Pacific could remain under the control of one agency and not be separated and given over to the control of two. This conclusion, in conjunction with the opinion we have already expressed that the advantage to shippers as to transcontinental freight will be negligible if the provisions of this contract are carried out, leads us to suggest that it would be better to adopt the other method already suggested of bringing about the design of Congress in providing that the Central Pacific and the Union Pacific should be one continuous transcontinental line, namely, by the sale or long term lease of the line of the Central Pacific from Ogden to Sacramento to the Union Pacific and the provision for a trackage right from Sacramento to bay points for the Union Pacific and the retention by the Southern Pacific of the remainder of the Central Pacific system.

Having given our views upon that portion of the contract, which while involved in the entire plan does not specifically require our approval, we shall now consider those matters for which our approval is required.

The lease by the Central Pacific of its line of road from Tehama to the Oregon line, to the Southern Pacific Railroad Company for 999 years, we believe, is unobjectionable, and should meet with our approval, except as to the method of determining the rental thereof. Inasmuch as the same fault



which we find with the method here involved is inherent in the method of determining the rentals in each instance and the sale price of the road from Weed to Natron, it is well for us at this time to point out our objection and to suggest a remedy.

The agreement provides that the Southern Pacific shall pay to the Central Pacific an annual rate of 5 per cent. of the value of the line to be leased, the value to be agreed upon by the parties, if possible, and if not, to be determined by arbitration according to a method laid down in the agreement.

This Commission has heretofore held that in cases involving the sale by a public utility of any portion of its property devoted to the public use, or the rental of such property, the valuation shall be subject to this Commission's approval, and we see no reason for departing from this principle in this case. While we do not disapprove of the plan of arriving at the valuation outlined in the agreement as a preliminary ascertainment of such value, still for such value to have final effect it will be necessary for this Commission in each instance to pass upon it. The observation applies to all cases of sale or lease herein considered.

In the Tehama-Oregon line transaction, we do not object to the term of 999 years, constituting, of course, practically a perpetual lease, because we conceive this to be a case wherein a sale of this property would meet with our approval, and where such sale is only prevented by the outstanding bonded obligations rendering a sale impracticable.

We likewise approve of the provision for the sale of that portion of the Weed-Natron branch, which is located in California, except as to the valuation, as heretofore stated. The same may be said as to the Redwood-San Francisco lease, except as to the term thereof. Except in those cases where we would approve a sale of the property and a sale is only prevented by the outstanding obligations which are liens upon the property, we think a perpetual lease is not warranted. In other words, except in those cases where we would approve a sale we will not approve a perpetual lease. This is equally applicable to the term of 999 years provided in all of the other leases which are hereafter to be considered.

The Commission is, however, willing to permit the leases in this case to run for a period of fifty years and for the further period until the Commission or other competent state authority, after notice and hearing, directs their cancellation or modification, whereupon such cancellation or modification shall be made.

The city of Sacramento was represented at the hearing by its city attorney, who stated that the city was at present in litigation with the parties hereto, or some of them, in the matter of city franchises which the city claims have expired, and that the city expected that additional litigation as to other city franchises would soon be initiated. The city attorney requested that the Commission insert in its order a condition to the effect that no rights of the city should be prejudiced by the order. The city attorney of Oakland made a similar request. The attorneys for the applicants herein agreed that such condition might be inserted and the Commission will do so, although it is of the opinion that no act on its part could be construed to revive an expired city franchise or otherwise prejudice the cities with respect to such franchise.

The provision for the lease of the Benicia short line and the joint use of terminals, including industry tracks, are the ones to which we find the most serious objection. The agreement contemplates that the Southern Pacific shall grant to the Central Pacific for the Union Pacific the equal joint use and possession of the short line from Sacramento to Oakland via Benicia, at an annual rental, and that no additional company may use the tracks so leased unless it has first secured the written consent of both the Southern Pacific and the Central Pacific. In other words, these two companies are to have the use of these very desirable tracks to the exclusion of any other railway company, unless both the Southern Pacific and the Central Pacific concur in letting in the stranger. We recognize fully that this property now belongs solely to the Southern Pacific Railroad Company and is operated solely by the Southern Pacific. Nevertheless, the grant by the Southern Pacific of the use of its tracks to one independent competitor (the Central Pacific) while refusing

to grant the same rights to another independent competitor (the Western Pacific) would work a discrimination which the welfare of this State does not permit and which this Commission will not sanction. If the Southern Pacific is going to throw its property open to one of its several independent competitors, it must play fair with the others and permit its use by them also, on terms which shall provide for a just compensation, to the extent to which the capacity of the property reasonably permits. If the present plan of a sale by the Southern Pacific of the Central Pacific stock to the Union Pacific be abandoned and in lieu thereof the Union Pacific shall buy the line of the Central Pacific between Ogden and Sacramento or secures long term lease thereof, with lease or trackage rights thence into San Francisco, other considerations might arise. It might then be held that the Union Pacific would be acting in accordance with the plan of Congress to secure a connected line of railway via the Union Pacific and the Central Pacific to the coast and that the Central Pacific was not acting voluntarily in granting the trackage rights to enable the Union Pacific to reach the coast from Sacramento. This effect of the Federal statutes heretofore referred to would confine the right to an outlet for the Union Pacific to the Stockton-Niles route.

While there is some argument in favor of the joint use of certain terminals by the Southern and Central Pacific to the exclusion of other lines, particularly as affects such a terminal as the Oakland Pier, still we do not believe that under all the circumstances of this case the provision that only by the joint approval of these companies are these terminals, including industry tracks, as we interpret the agreement, to be used by any other company is justified. A condition concerning this matter will be inserted in the order.

We are not unmindful of the fact that, as testified by both Judge Lovett and Mr. Sproule, these companies are more or less under duress to contract. On the one hand the stock of the Southern Pacific owned by the Union Pacific is in the hands of the court for sale, and if an arrangement is not consummated before ninety days shall have elapsed after the decision of the court, this stock is to be placed in the hands

of a receiver to be sold as the court directs. It is testified that the Attorney General is threatening proceedings against the Southern Pacific if it does not divest itself of control of its alleged competing line, the Central Pacific, and we appreciate the desire of the parties to bring about a solution of their troubles which will result in as little financial loss to them as possible, yet we believe it is our duty to have in mind the effect of any arrangement which may be designed upon not only the contracting parties here, but the public. As we have already indicated, we do not believe the sale of the stock of the Central Pacific is necessary to bring about the result desired by the Supreme Court, or even by the Attorney General, but if Federal authorities acting within their jurisdiction in this matter, which is wholly without our jurisdiction, shall decide that the sale of this stock must be made, then we do not feel that it will be possible for us to protect the public beyond that protection which may be accorded by the imposition of conditions specified in the order herein, which conditions, while not designed to be oppressive to the contracting parties, have as their object the restoration of real competition in local traffic in addition to the competition in transcontinental traffic which is designed by the Attorney General.

We submit herewith the following form of order:

#### ORDER.

Central Pacific Railway Company, Southern Pacific Railroad Company and Southern Pacific Company having filed with this Commission their application for an order authorizing (a) the lease by the Central Pacific Railway Company to the Southern Pacific Railroad Company of its line of railway between Tehama, California, and the California-Oregon boundary line; (b) the sale by the Central Pacific Railway Company to the Southern Pacific Railroad Company of so much of its line of railway between Weed, California, and Natron Station, Oregon, as lies within the State of California; (c) the grant by the Southern Pacific Railroad Company and the Southern Pacific Company to the Central Pa-

cific Railway Company of the equal joint use and possession of the line of railway of the grantees between Sacramento and Oakland via Benicia and Port Costa, at an annual rental; (d) the grant by the Southern Pacific Railroad Company and the Southern Pacific Company to the Central Pacific Railway Company of trackage and running rights between Redwood City and San Francisco for the operation of through freight trains, only, at an annual rental, and (e) the grant by the Southern Pacific Railroad Company (or the Southern Pacific Company) to the Central Pacific Railway Company and the grant by the Central Pacific Railway Company to the Southern Pacific Railroad Company (or the Southern Pacific Company) of the joint and equal use of all terminals, including industry tracks at all junctions of their respective lines within city limits, at annual rentals,—all as set forth in said application on file with this Commission; and a public hearing having been held on said application and the Western Pacific Railway Company having appeared in opposition to the granting of said application, and the Commission being fully advised in the premises, we hereby find as a fact that public convenience and necessity will not be served by the granting of said application except on the conditions hereinafter specified. Basing our order on this finding of fact, and on the further findings contained in the opinion which precedes this order,

*It is hereby ordered*, that said application be and the same is hereby granted, but only on the following express conditions and not otherwise, to wit:

1. The price at which the property covered by the agreement between the applicants hereto shall be sold or the valuation on which its rental shall be based, as the case may be, shall be only such price or valuation as shall first have been formally submitted to and approved by the Railroad Commission. This condition shall not be held to be a condition precedent to the consummation of said agreement, but such sale price and rentals shall not be paid or become due until such approval of the Railroad Commission has been secured.

2. The rates and fares which may be filed with the Railroad Commission by any party or parties to said agreement,

between points within the State of California, growing out of the altered conditions resulting from said agreement, shall in no case exceed the rates and fares in effect between said points on the twenty-fourth day of February, 1913, over the lines now operated by the Southern Pacific Company. Within sixty days from the effective date of said agreement the railroads, parties hereto, shall file with this Commission joint rates and fares for the transportation of freight and passengers between all points in the State of California, which said joint rates and fares shall not exceed the present rates and fares of the Southern Pacific Company between the same points now on file with this Commission.

3. The term of each 999 year lease referred to in the agreement, other than the lease of the line of railway between Tehama and the California-Oregon line, as to which the term is approved, shall be fifty years and for such further period of time thereafter, and upon such terms as the Railroad Commission, after notice and hearing, shall have determined to be reasonable.

4. In the event that the Southern Pacific Company and the Southern Pacific Railroad Company hereafter grant to the Central Pacific Railway Company, under the terms of said agreement or otherwise, or any other line, the use or possession of the line of railway known as the Benicia short line, said Southern Pacific Company and Southern Pacific Railroad Company shall grant a similar privilege to any other competing line of railway which may make application therefor, for an equitable compensation, to the extent to which said line may reasonably be used. If the parties cannot agree as to the terms of the use or possession or the reasonableness of being admitted to said use or possession, they shall make formal application to the Railroad Commission, which will thereupon after proceedings duly had determine the question involved.

5. In the event that any of the companies parties to said agreement shall grant, the one to the other, or to any other railroad company, the use or possession of any of the terminals, including industry tracks, specified in said agreement, said company or companies granting such use or pos-

session shall grant a similar privilege to any other competing line of railway which may make application therefor, for an equitable compensation, to the extent to which such facilities may reasonably be used. In the event that the parties cannot agree, the same proceedings shall be had as in the preceding paragraph. This condition, however, may be modified by the Commission in the event of terminal facilities now jointly used by any two of the parties to said agreement, in such cases as the Commission, after a hearing, shall find to be reasonable.

6. Neither this order nor any act done in pursuance of its authority shall be construed as extending, reviving or in any way affecting the term of any franchise or permit or as prejudicing in any way the rights of the State of California or of any city, town, county or other political subdivision thereof.

7. This order shall not become effective for any purpose unless and until all the parties to said agreement shall first have filed with the Railroad Commission a stipulation under the hand and seal of said applicants, duly authorized by the board of directors or other competent governing body of each thereof, agreeing for themselves and their respective successors and assigns to be bound by and comply in good faith with each condition of this order.

Dated at San Francisco, California, this 24th day of February, 1913.

IN THE MATTER OF THE APPLICATION OF CENTRAL PACIFIC RAILWAY COMPANY, SOUTHERN PACIFIC RAILROAD COMPANY AND SOUTHERN PACIFIC COMPANY FOR AUTHORIZATION TO MAKE A LEASE OF A CERTAIN RAILROAD; TO MAKE A SALE OF A CERTAIN RAILROAD; TO MAKE A CONTRACT FOR THE JOINT USE AND POSSESSION OF A CERTAIN RAILROAD; TO MAKE A CONTRACT FOR RUNNING AND TRACKAGE RIGHTS OVER A CERTAIN RAILROAD; AND TO MAKE A CONTRACT FOR THE JOINT USE OF CERTAIN RAILROAD TERMINALS.

Application No. 409—Decision No. 478.

*Decided February 24, 1913.*

**Sale and Lease of Railroad Property—Compliance with Requirements of United States Supreme Court and Federal Legislation—Joint Use of Facilities—Equal Privileges to All Competing Railroads. [Ed.]**

Understanding that the conditions imposed in the original opinion and order\* herein will result in the rejection of the agreement, thus rendering necessary further negotiations between the parties, this supplemental opinion specifies the arrangements that will be approved:

*First*—Under specified conditions sanction will be given to an arrangement which puts the Union Pacific in entire or joint control with the Southern Pacific of the Central Pacific line from Sacramento by way of Niles to Oakland. Such conditions involve a long term lease, freed from the objections urged in the original opinion against the method of arriving at a value, by the Central Pacific to the Union Pacific of the line from Ogden to Sacramento, including the line from Roseville to Tehama. This arrangement will place the Union Pacific at Sacramento in a position in regard to an outlet to the coast different from that occupied by any other line at that point. Under the acts of Congress providing for the construction of the Union Pacific and Central Pacific as construed by the Supreme Court of the United States, it is provided that the Union Pacific have an outlet over the Central Pacific to San Francisco. Such being the case, if the Central Pacific gives to the Union Pacific access to San Francisco from Sacramento over the Central Pacific line between these two points, such agency will have done so, not as a voluntary act, but as a requirement of Congress, and cannot be held as thereby subjecting itself to any penalty or disadvantage by reason of such act. If the above scheme is adopted and the Union Pacific secures exclusive control of the Central Pacific line from Ogden to Sacramento, it may likewise secure exclusive or joint control of the line from Sacramento to Oakland by way of Niles because of the fact that this is the outlet of the Central Pacific referred to in the congressional acts and admitted to be such by the parties to this case.

\*See page 566.



Also, permission will be given to the exclusive use by the Union Pacific or the joint use by it with the Southern Pacific of such terminals as are incident to this line of railroad from Sacramento but not the facilities which are incident to any other line independent of this line.

Also, having secured by the above method an outlet to San Francisco, the Union Pacific may not say that it finds itself in Sacramento in any different position as regards any other line from Sacramento to Oakland than is the Western Pacific or any other competing line, and there is no more reason for giving it a right of way over a more advantageous line between Sacramento and Oakland even for an adequate consideration, than there is for giving such a right of way to the Western Pacific or any other independent line.

*Second*—If, instead of the leasehold alternative as above suggested, the original plan is adhered to of giving to the Union Pacific, through stock ownership, not only the main line of the Central Pacific from Ogden by way of Sacramento and Niles to Oakland, but also the important feeders from such line, then the approval of the Commission will limit the Union Pacific to the line between Sacramento and Oakland to which this ownership entitled it and the terminals incident thereto. If it is accorded any other terminals or any other route by the voluntary act of the Southern Pacific, or Central Pacific, the conditions imposed in the main opinion and order shall be insisted upon.

Approval likewise will be given to the following arrangements but only on the conditions outlined in the main Opinion and Order, to wit: respecting the lease of the line from Tehama to the Oregon State line; the sale of the Weed line; the lease of the Bay Shore cut-off; the lease of the Benicia Short Line from Sacramento to Oakland; the lease of the terminals, including industry tracks, specified in the agreement, the latter to be made definite and specific.

Except as to those facilities of the Central Pacific and Southern Pacific which are so interwoven that it is impossible to require their separation, if the use of any other facilities such as industry spurs and terminal facilities be accorded by the Southern Pacific to the Central Pacific, or the Central Pacific to the Southern Pacific, then the voluntary according of such use will carry with it, as an annexed condition, the necessity of according similar privilege to any other line similarly situated and willing to pay a reasonable compensation therefor.

*McCutchen, Olney and Willard and W. W. Cotton, for Central Pacific Railway Company.*

*Wm. F. Herrin and Guy V. Shoup, for Southern Pacific Company and Southern Pacific Railroad Company.*

*Chas. S. Wheeler and Allan P. Matthew, for Western Pacific Railway Company.*

*Robertson T. McKisick, City Attorney, for City of Sacramento.*

*Ben F. Woolner, City Attorney, for City of Oakland.*

*Seth Mann, for San Francisco Chamber of Commerce.*

## SUPPLEMENTAL OPINION.

Inasmuch as we understand the imposition of the conditions set out in the main opinion and order\* will result in the rejection of the contract in its entirety, thus rendering further negotiations between the parties necessary, it is proper to set out specifically what arrangements we will approve and the reasons therefor.

The Supreme Court orders one act only, aside from the temporary expedients incidental to the carrying out of the decree, namely, the sale by the Union Pacific of the Southern Pacific stock. It permits, however, to the Union Pacific "the Central Pacific connection from Ogden to San Francisco \* \* \* ", thus effecting such a continuity of the Union Pacific and Central Pacific as was contemplated by the acts of Congress under which they were constructed." (*United States vs. Union Pacific Railroad Company et al.*) Recognizing the importance of such a suggestion from the Supreme Court, we will treat the decree as directing such an outlet over the Central Pacific as here suggested and will assume that it is the duty of any inferior tribunal acting within its jurisdiction to exercise any discretion which it may have in such a manner as to effectuate this design of the Supreme Court as well contained in its suggestion as required by its command. Therefore, we proceed upon the theory that the Union Pacific is to be divested of control of the Southern Pacific by such disposition of the Southern Pacific stock as will make these two lines bona fide independent lines, and that the Union Pacific is to be invested with an outlet to the coast.

The Attorney General of the United States has recognized these two requirements, but he has added an additional requirement, admittedly not commanded or suggested in the decree and which could not be directly brought about except by a new proceeding in the Federal courts prosecuted to a decree favorable to his contention in the Supreme Court of the United States. This is the requirement that the Southern Pacific Company sell the stock of the Central Pacific. We assume, however, that the insistence by the Attorney General

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\* See page 566.

upon the sale by the Southern Pacific Company of the stock of the Central Pacific held by it is only incidental to his main design which is to prevent the control by the Southern Pacific Company which owns the Sunset line by way of the El Paso gateway of a line at least in part competitive therewith to the Ogden gateway. We cannot believe that the plan of the Attorney General to bring about his desired result makes necessary anything more than the surrender by the Southern Pacific Company of the Central Pacific main line and its exclusion from any interest therein. Certainly, the main design does not necessitate the surrender by the Southern Pacific to its present dominant ally but competitor to be, of its most important feeders and all of its advantages secured by reason of its being first in the field. Neither does it contemplate the admission of this formidable rival to the exclusion of any other rival or ally to the joint use of one of its advantageous short lines nor to the exclusive joint use of its important terminals. Neither do we think the Attorney General desires to upset local traffic conditions by breaking a well built system of local lines well suited to serve the local needs of the people of this State into two dissociated sets of branches, some of which begin and end nowhere if we have reference to their separate ownership. These local lines are the result of many years of growth, and any one at all familiar with railroad conditions in this State knows that they can be much more conveniently and economically managed as one local system than by the substitution of two incomplete local systems and two agencies to perform the service now being carried on by one complete system in charge of one agency.

That the Attorney General has in view the bringing about of a result and is not insisting upon any particular method of accomplishing such result is, we believe, a fair inference. We are confirmed in this by his attitude expressed by telegraph on the first day of the hearing of this case as to the exclusive use of the Benicia cut-off and the terminals of the Southern Pacific by the Union Pacific.

We then conclude that all that the Attorney General adds to the two requirements of the Supreme Court is the one ad-

ditional which contemplates the disposition by the Southern Pacific Company of its control of the main line of the Central Pacific with which it is supposed to compete by the El Paso route, and that he is not committed to any particular method and that his approval may be expected to any reasonable method of effectually accomplishing this result.

The essential elements of the plan of the Supreme Court as added to by the Attorney General are:

*First*—The sale of the Southern Pacific stock by the Union Pacific.

*Second*—The securing by the Union Pacific of an outlet to the Coast over the Central Pacific line; and

*Third*—The surrender by the Southern Pacific Company of so much of the Central Pacific line as is necessary to prevent said Southern Pacific Company from controlling a line designed to compete with its El Paso route.

With the first requirement we have no direct official concern, but we invite the attention of the Attorney General and the court to the contention of the Western Pacific Railroad Company that the syndicate formed by Kuhn, Loeb & Company, the Union Pacific bankers, is in effect accomplishing by indirection what the Supreme Court refused to permit to be accomplished directly, viz., the purchase by the stockholders of the Union Pacific of the Southern Pacific stock. It is urged that this banking house and the syndicate formed by it are controlled by the large stockholders of the Union Pacific, and that by making Southern Pacific stock an undesirable investment, the stockholders of the Southern Pacific Company will be deterred from buying and the Union Pacific controlled syndicate will thereby secure control of this stock, thus leaving the Union Pacific and Southern Pacific controlled by the same stockholders, an arrangement which the Supreme Court has already condemned.

The two other conditions, we believe, may be readily worked out together so as substantially to meet the requirement of the court and the Attorney General as well. If a lease similar in terms to the one agreed upon to the Tehama-Oregon line of the Central Pacific be made by the Central Pacific to the Union Pacific of the line from Ogden to Sacra-

mento, including the line from Roseville to Tehama, freed from the objection already urged against the method of arriving at a value, this Commission will approve such a lease. We see no reason why a flat price covering the value of this line cannot be agreed upon since an exclusive lease for such a long time would be tantamount to ownership; or a lease with option to purchase, when the bonded indebtedness admits, might be consummated. This arrangement will place the Union Pacific at Sacramento in a position in regard to an outlet to the coast different from that occupied by any other line at that point. Under the acts of Congress providing for the construction of Union Pacific and Central Pacific as construed by the Supreme Court of the United States, it is provided that the Union Pacific have an outlet over the Central Pacific to San Francisco. Such being the case, if the Central Pacific or its successor in interest, gives to the Union Pacific access to San Francisco from Sacramento over the Central Pacific line between these two points, such agency will have done so not as a voluntary act, but as a requirement of Congress, and certainly cannot be held as thereby subjecting itself to any penalty or disadvantage by reason of such act. Therefore, if the scheme which we have suggested is adopted and the Union Pacific secures exclusive control of the Central Pacific line from Ogden to Sacramento, it may likewise secure exclusive or joint control of the line from Sacramento to Oakland by way of Niles because of the fact that this is the outlet of the Central Pacific referred to in the congressional acts and admitted to be such by the parties to this case. Therefore, under such conditions we will sanction an arrangement which puts the Union Pacific in entire or joint control with the Southern Pacific of the Central Pacific line from Sacramento by way of Niles to Oakland.

As regards the terminals, we are willing to permit the exclusive use by the Union Pacific of the joint use by it with the Southern Pacific of such terminals as are incident to this line of railroad from Sacramento, but not the facilities which are incident to any other line independent of this line.

Having secured by the method herein outlined an outlet

to San Francisco over the line and in a way selected for it by Congress, the Union Pacific may not say that it finds itself in Sacramento in any different position as regards any other line from Sacramento to Oakland than is the Western Pacific or any other competing line, and there is no more reason for giving it a right of way over a more advantageous line between Sacramento and Oakland even for an adequate consideration than there is for giving such a right of way to the Western Pacific or any other independent line. The only warrant for the position of the Union Pacific that it should be allowed to get to San Francisco is derived from the acts of Congress which alone constitute it superior in this respect to other lines. The intentions of Congress having been effectuated by its admission to the use of the line designated by Congress, it may not urge as a right its admission either to the joint or several use of another line. This conclusion has led the Commission in its main opinion and order to impose as a condition upon the use by the Union Pacific of the Benicia short line the right under similar terms of any other road to use the same.

We have endeavored herein to point out a method which we believe would satisfy the command and suggestion of the Supreme Court and the desire of the Attorney General, and have stated our reasons for recommending this arrangement. If, however, the Attorney General and the Circuit Court in its discretion shall hold that the Southern Pacific shall sell all of the Central Pacific stock to the Union Pacific, thereby giving to the Union Pacific through stock ownership not only the main line of the Central Pacific from Ogden by way of Sacramento and Niles to Oakland, but also the important feeders from such line, we shall not be disposed to withhold our approval to the other provisions of the agreement presented to us on the sole ground that the Federal authorities have adopted the stock ownership plan for the transfer of this property with its attendant disadvantages, and not the plan which we have recommended, which we believe from a careful investigation of the conditions is preferable from the standpoint of the public. In other words, we have deemed it best to point out to the Federal authorities our objection to

the control of the entire Central Pacific system by the Union Pacific and have suggested an alternative plan which will meet such objections, but if after having considered our proposal, the Federal authorities, acting within their jurisdiction, adhere to the original plan of the Attorney General, we will waive this objection, because while we consider it important we do not consider it entirely essential. Particularly, do we reach this conclusion by reason of the fact that this Commission has the power to regulate local rates and service and the admitted intention of the parties not to attempt to use the separation of these lines as a means and excuse for increasing the rates and impairing the service.

If the Union Pacific under the permission of the Attorney General and the Federal court is permitted to purchase the stock of the Central Pacific, then, we will limit it to the line between Sacramento and Oakland, to which this ownership entitles it and the terminals incident thereto. If it is accorded any other terminals, or any other route, by the voluntary act of the Southern Pacific Company, we shall insist upon the conditions which we have imposed in the main opinion and order. We, therefore, recommend the arrangement which we have suggested for the acquirement by the Union Pacific of the main line of the Central Pacific from Ogden by way of Sacramento and Niles to Oakland and the branch line from Roseville to Tehama, but, if the Attorney General and the Circuit Court, in spite of such recommendation, desire that the Union Pacific secure the stock of the Central Pacific, thereby securing not only this main line, but the branches, our approval will be given likewise to the following arrangements, but only on the conditions outlined in the main opinion and order.

We will approve, if application is made therefor, the arrangement outlined in the main decision respecting the lease of the line from Tehama to the Oregon state line; the sale of the Weed line; the lease of the Bay Shore cut-off; the lease of the Benicia short line from Sacramento to Oakland; the lease of the terminals including industry tracks, specified in the agreement, the latter to be made definite and specific hereafter.

We recognize that some of the facilities of the Central Pacific and Southern Pacific are so connected and interwoven that it is practically impossible to require their separation, and the Commission will be disposed to recognize any necessities which may arise from such cause, but if the use of any other facilities, such as industry spurs and terminal facilities of a similar character be accorded by the Southern Pacific to the Central Pacific, or the Central Pacific to the Southern Pacific, then the voluntary according of such use will carry with it as an annexed condition the necessity of according a similar privilege to any other line similarly situated and willing to pay a reasonable compensation therefor. And it shall only be necessary in each instance for the line desiring these privileges to be accorded to it to secure the consent of the owner of such facilities and not the consent of the other company which has been voluntarily admitted to the use.

Dated at San Francisco, California, this 24th day of February, 1913.



## KANSAS.

### Public Utilities Commission.

**THE GARDEN CITY TELEPHONE, LIGHT AND MANUFACTURING COMPANY, *Complainant*, vs. THE CITY OF GARDEN CITY, *Respondent*.**

Docket No. 411.

*Decided July 30, 1912.*

**Ordinance Fixing Rates—Higher Rates Recommended by Commission—Valuation of Property—Reproduction Cost—Present Value—Depreciation—Rate of Return.**

Complaint alleging that Ordinance No. 97 of the City of Garden City, fixing rates for electric light and power, was unreasonable, and that the rates fixed therein were so low that the complainant would be unable to furnish current and maintain its plant in its present efficiency without great loss, and asking that the Commission recommend and advise the City to make such changes in the ordinance as might be necessary to protect the public interest.

As opposed to the company's book value of \$60,973.83 for the plant used by the complainant in furnishing electricity, the Commission fixed a fair value of \$45,000, including intangible values. In reaching its valuation, the Commission estimated the reproduction cost new and the present value. The Commission proposed a schedule of rates lower than the rates charged by the complainant, but higher than the rates fixed by the ordinance, and held that \$2,000 was a proper annual allowance for depreciation, and that the rates proposed would yield 7.7% on \$45,000, which was an ample return upon the fair value of that part of the complainant's plant used for the production of electricity for light and power.

The Commission advised and recommended that the City revise and change the ordinance so as to provide for the proposed rates.\*

### REPORT AND ORDER.

The City of Garden City is a city of the second class and is situated in Finney County, Kansas.

The Garden City Telephone, Light and Manufacturing Company is a corporation organized and existing under and

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\*Editor's headnote.

by virtue of the laws of the State of Colorado, and is engaged in operating a telephone system and an electric light system in the City of Garden City. The telephone system and electric light plant are operated by the same management and wherever possible, with the same employees, buildings, office fixtures, tools and appliances. The rates charged for electricity for lighting purposes are as follows:

1 Kilo-watt hour to 75 Kilo-watt hours, 15 cents.

76 Kilo-watt hours to 150 Kilo-watt hours, 13 cents.

151 Kilo-watt hours and above, 10 cents.

There are 129 lights on flat rates.

There is a special rate of 8 cents per Kilo-watt hour to the Windsor Hotel.

Employees of the light company receive a flat rate of \$1.00 per month.

Other than to employees, the minimum rate with metered service is \$1.50 per month.

There are 65 street lamps in operation for which the company receives from the city \$1,639.05 per annum.

On the 6th day of June, 1912, the City, by its Mayor and Council, passed the following ordinance:

**ORDINANCE No.—97—N. S.**

**An Ordinance Providing for the Fixing of Rates and Charges for the Furnishing and Supplying of Electric Light and Electric Current to the Inhabitants of the City of Garden City, Finney County, Kansas, by Any Person or Persons, Firm, Company or Corporation, and Providing Penalties for the Violation of Any of the Provisions of Said Ordinance.**

*Be it ordained by the Mayor and Councilmen of the City of Garden City:*

**SECTION 1.** Hereafter, no person, persons, firm, company or corporation within the City of Garden City, who shall own, control or operate, any works or plant, for the purpose of furnishing and supplying electric light or electric current, to the inhabitants of said city, shall charge for or collect from any of the inhabitants of said city, who shall subscribe for use or consume any such electric light or electric cur-

rent, any greater sum or sums of money for such light or current, than as specified and designated in section two (2) and three (3) of this ordinance.

SECTION 2. The meter rate for electric current for lighting purposes, shall not be more than ten cents per Kilo-watt hour, provided that when less than ten Kilo-watt hours per month be used by any consumer, a charge of not more than One Dollar shall be made.

SECTION 3. The meter rate for current for power purposes, shall not be more than five cents per Kilo-watt hour, provided that when less than twenty Kilo-watt hours per month be used by any consumer, a charge of not more than One Dollar shall be made.

SECTION 4. All electric meters used shall be read monthly, and such reading furnished to each consumer, showing the amount or quantity of current for light or power purposes, furnished and supplied to each such consumer or subscriber, for the preceding month, showing the last previous reading and the present reading.

SECTION 5. Each and every person, persons, firm, company or corporation, their agents, servants or employees, so furnishing light and power to the inhabitants of said city, who violate any of the provisions of this ordinance, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not exceeding Fifty Dollars, and shall be imprisoned until such fine and the costs of prosecution are fully paid.

SECTION 6. All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

SECTION 7. This ordinance shall take effect and be in force and effect from and after its passage and publication in the Garden City Herald.

(Signed) WALTER HARVEY,  
Mayor.

Attest: J. F. CROCKER,  
City Clerk.

[SEAL.]

On the 17th day of June, 1912, the Garden City Telephone, Light and Manufacturing Company filed its complaint with the Public Utilities Commission of the State of Kansas, asking that if this Commission find that the provisions of said ordinance are unreasonable and against public welfare, or has reason to believe that the same is contrary to law, it will within ten days thereafter, recommend and advise said city to make such changes in the ordinance as may be necessary to meet the objections set forth in the complaint and protect public interest and remove any unreasonable provisions therefrom. The complaint alleges that on the 31st day of December, 1911, there had been invested by said complainant in the said light plant, the sum of \$60,973.83, and further alleges that the said ordinance is unreasonable in this, that the rates therein fixed are so low that the complainant is and will be unable to furnish electric current to the inhabitants of said city and maintain its electric plant in its present efficiency, without great loss, damage and expense and that said ordinance is against public policy, contrary to law, and against the best interests of the city.

Due notice was given, and hearing was had at Garden City on the 5th day of July, 1912, before the Public Utilities Commission, there being present George Plumb, and John T. White, Commissioners; John Marshall, Attorney for the Public Utilities Commission; W. R. Hopkins, Attorney for the City of Garden City, and Edgar Foster, Attorney for the Garden City Telephone, Light and Manufacturing Company. A number of witnesses were sworn and evidence introduced.

The books of the Company show that the electric light plant has cost the Company \$60,973.83. The electric light plant was purchased by the complainant some five or six years ago, from another company who had prior to that time been operating same in Garden City. The sum of \$60,973.83 includes the sum of \$5,785 paid to parties interested in the plant at the time of such purchase but for which the Complainant Company received no value.

The Commission caused a valuation and appraisement of the property of the Complainant, to be made by its Engineer, Carl C. Witt. From his report the Commission finds that it

would cost \$51,051 to reproduce the complainant's lighting plant in the City of Garden City, new; that the present condition of the lighting plant is 87.7 per cent. of its value new, making the present value of the plant, \$44,772. From this report the Commission finds that an entirely new plant ample to furnish electricity for Garden City at the present time, and for a number of years in the future, will cost \$40,000. There is evidence to show that such plant can be built for \$37,000. After taking into consideration all the conditions and circumstances surrounding the electric light plant situated at Garden City, Kansas, including intangible values as well as the value of the physical plant, the Commission finds that the value of the plant now owned and operated by the Complainant for the benefit of Garden City, in furnishing electricity, is \$45,000. The Commission finds that the total receipts of the Complainant Company for the calendar year 1911, were \$14,400. The total operating expenses not including depreciation, were \$7,897.01, leaving an income of \$7,502.99. The Commission finds that from this sum there should be deducted a further sum of \$2,000 to be set aside to replace the depreciation in the plant. This leaves a net profit after deducting depreciation, of \$5,502.99. This gives a return of 12.2 per cent. on \$45,000, and 13.75 per cent. on \$40,000, and 10.7 per cent. on \$51,051.

Under present conditions a minimum amount of electricity is used in Garden City. With reasonable rates and an agreeable business management, there is every reason to believe that the use of electricity in Garden City will be greatly increased in the future. There is no reason to believe that such use will be decreased. There is difficulty in ascertaining the net revenue to be received by the Complainant Company under any system of meter rates, because of the mixture of flat rates and meter rates now in operation in Garden City. The Commission is of the opinion that for lighting, a rate of 11 cents per Kilo-watt hour with a minimum rate of \$1.25 per month, and for power, a rate of 6½ cents per Kilo-watt hour for the first 100 Kilo-watt hours, 5½ cents per Kilo-watt hour for the second 100 Kilo-watt hours, and 4½ cents per Kilo-watt hour for all above 200 Kilo-watt hours, with a minimum

rate of \$1.25 per month, with a discount of 10 per cent. on all bills if paid on or before the 10th day of the month succeeding the close of the month during which electricity was furnished, will be reasonable.

The Commission is of the opinion that \$2,000 is a proper sum for annual depreciation, and that these rates will yield to the Complainant Company, after paying all operating expenses and setting aside \$2,000 for depreciation, the sum of \$3,502.99 annually. This sum is 8.75 per cent. of \$40,000; 6.9 per cent. of \$51,051, and 7.7 per cent. of \$45,000, which rate in the opinion of the Commission is ample return upon the fair value of that part of the Complainant's plant in Garden City, used for the production of electricity for lighting and power.

*It is therefore by the Commission advised and recommended* that the respondent City revise and change said Ordinance so as to provide for rates as follows:

A rate of 11 cents per Kilo-watt hour for electric lights, with a minimum rate of \$1.25 per month.

A rate for power of 6½ cents per Kilo-watt hour for the first 100 Kilo-watt hours, 5½ cents per Kilo-watt hour for the second 100 Kilo-watt hours, and 4½ cents per Kilo-watt hour for all above 200 Kilo-watt hours, with a minimum rate of \$1.25 per month.

And that all bills paid on or before the 10th day of the month succeeding that during which electricity has been furnished, there shall be allowed a 10 per cent. discount.

## MARYLAND.

### Public Service Commission.

IN THE MATTER OF THE APPLICATION OF THE FREDERICK AND HAGERSTOWN POWER COMPANY; THE HAGERSTOWN RAILWAY COMPANY, OF WASHINGTON COUNTY, MARYLAND; HAGERSTOWN AND MYERSVILLE RAILWAY COMPANY; HAGERSTOWN AND BOONSBORO RAILWAY COMPANY; HAGERSTOWN AND NORTHERN RAILWAY COMPANY; MYERSVILLE AND CATOCTIN RAILWAY COMPANY OF FREDERICK COUNTY; FREDERICK RAILROAD COMPANY AND FREDERICK GAS AND ELECTRIC COMPANY, FOR AUTHORITY, (1) TO CONSOLIDATE AND FORM A NEW COMPANY TO BE KNOWN AS THE HAGERSTOWN AND FREDERICK RAILWAY COMPANY, AND (2) TO EXCHANGE SHARES OF THE NEW CONSOLIDATED COMPANY FOR SHARES OF STOCK OF THE ABOVE MENTIONED CONSTITUENT COMPANIES, (3) TO ISSUE SIX HUNDRED AND THIRTY-FIVE THOUSAND DOLLARS (\$635,000) PAR VALUE OF 7 PER CENT. CUMULATIVE PREFERRED STOCK, AND TWO MILLION DOLLARS (\$2,000,000) PAR VALUE OF COMMON STOCK FOR THE PURPOSE OF MAKING EXCHANGES WITH STOCKHOLDERS OF THE CONSTITUENT COMPANIES, AND TO AUTHORIZE AN ISSUE OF TEN MILLION DOLLARS (\$10,000,000) PAR VALUE OF FIRST MORTGAGE 5 PER CENT. THIRTY (30) YEAR SINKING FUND BONDS, AND TO SELL AT LEAST THREE MILLION AND THREE HUNDRED THOUSAND DOLLARS (\$3,300,000) PAR VALUE OF THE SAME, TOGETHER WITH PART OF THE SAID COMMON STOCK FOR THE PURPOSE OF REDEEMING BONDS ISSUED AND OUTSTANDING BY THE ABOVE NAMED COMPANIES, AND FOR THE PURPOSE OF PROCURING FUNDS TO PAY THE INDEBTEDNESS OF THE ABOVE COMPANIES, AND FOR WORKING CAPITAL, EXPENSES, EXTENSIONS, BETTERMENTS AND IMPROVEMENTS.

Case No. 541.

*Decided February 21, 1913.*

**Approval of Consolidation—Capitalization of Consolidation—  
Replacements.**

Upon application for approval of a consolidation of electric railway, lighting and power companies, and of the proposed capitalization thereof, the Commission considered the outstanding capital stock, bonds and floating debt of the applicant companies with relation to the stock and bonds proposed to be issued for the purposes of the consolidation and the acquisition of property and construction of extensions.

With respect to the capitalization of the replacements involved the Commission agreed with its Engineer that,

"In considering the \* \* \* replacements, it is proper to take into consideration the fact that the completed line will be suitable for modern high speed interurban service, for which it is not now adapted, so that the total" (sum expended for replacements) "may simply be considered as among the improvements to the property though not actual physical additions."

The Commission approved the granting of the application, holding that the consolidation of the applicant companies was the only feasible solution of the unsatisfactory electric railway and lighting situation in the territory served by them. Unless some such step were taken, the companies would be unable to maintain their properties in a condition to furnish safe and adequate service and would be confronted by financial difficulties which would result in heavy losses to those who had invested money in them, and in possible foreclosure and reorganization that would be costly to the communities served which must ultimately bear the burden. The interests of the public required that the properties be placed in efficient operating condition at once, with ability to extend the service in response to the public demand, if this could be effected without imposing an undue burden upon the patrons of the utilities. The combined operating expenses were high and could be greatly reduced under a single management. The adoption of the plan submitted seemed to promise better service in the railway field and lower rates for lighting and power service in the near future.\*

**OPINION.**

**LAIRD, *Chairman.***

The purpose of this application is to ascertain whether or not the Commission would approve the consolidation of the applicants into a new company to be known as the Hagerstown and Frederick Railway Company upon the terms and for the purposes and with the capitalization set forth in the application.

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\*Editor's headnote



The present situation of the companies as to outstanding capital stock, bonds and floating debt, is as follows:

Frederick & Hagerstown Power Company, Stock....	\$300,000.00	
Frederick & Hagerstown Power Company, Bonds....	300,000.00	\$600,000.00
Hagerstown Railway Company, Stock.....	380,000.00	
Hagerstown Railway Company, Bonds.....	200,000.00	
Hagerstown Railway Company, Floating Debt.....	104,350.00	684,350.00
Hagerstown & Myersville Railway Co., Stock.....	120,000.00	
Hagerstown & Myersville Railway Co., Bonds.....	120,000.00	240,000.00
Hagerstown & Boonsboro Railway Co., Stock.....	120,000.00	
Hagerstown & Boonsboro Railway Co., Bonds.....	110,000.00	230,000.00
Hagerstown & Northern Railway Co., Stock.....	200,000.00	
Hagerstown & Northern Railway Co., Bonds.....	200,000.00	400,000.00
Myersville & Catoctin Railway Co., Stock.....	22,500.00	
Myersville & Catoctin Railway Co., Bonds.....	35,000.00	57,500.00
Frederick Railroad Company, Preferred Stock.....	170,000.00	
Frederick Railroad Company, Common Stock.....	650,000.00	
Frederick Railroad Company, Bonds.....	600,000.00	
Frederick Railroad Company, Floating Debt.....	478,572.71	1,898,572.71
Frederick Gas & Electric Co., Preferred Stock.....	100,000.00	
Frederick Gas & Electric Co., Common Stock.....	100,000.00	
Frederick Gas & Electric Co., Bonds.....	181,500.00	381,500.00
		<b>\$4,491,922.71</b>
Underlying bonds of Frederick & Middletown Railway Co.....	250,000.00	
Underlying bonds of Monocacy Valley Property.....	30,000.00	
		<b>\$4,771,922.71</b>

The proposed financing will require securities as follows:

For exchange of stock, new Preferred Stock.....	\$635,000.00
For exchange of old common stock to the amount of \$1,527,500.00, and for expenses of consolidation, including underwriting and sale of bonds, and the purchase and delivery of bonds of constituent companies:	
New Common Stock .....	2,000,000.00
New Bonds .....	3,300,000.00
	<b>\$5,935,000.00</b>

The cash realized from the sale of the \$1,440,000 bonds and \$472,500 of stock, amounting to \$1,152,000, is to be ex-

pendent in extinguishing the floating debts of the Hagerstown Railway Company and the Frederick Railroad Company, amounting in the aggregate to \$582,922.71, and in the acquisition of property, extensions up to June 30, 1914. The entire outlay for these purposes, for a period of three years, is given in detail in the estimate of Allen & Peck, Incorporated (File No. 9), and checked and approved by the Chief Engineer of the Commission as follows:

In 1913 .....	\$548,570.00
In 1914 .....	157,828.00
In 1915 .....	105,206.00
	<hr/>
	\$811,604.00

In the analysis of the estimates the Commission's Engineer found the sum of \$53,150 applicable to replacements, but states in his report that "in considering the column of replacements, it is proper to take into consideration the fact that the completed line will be suitable for modern high speed interurban service, for which it is not now adapted, so that the total of that amount, namely, \$53,150, may simply be considered as among the improvements to the property though not actual physical additions."

The present outstanding capital stock of all of the companies is \$2,162,500, of which \$270,000 is preferred stock, and this will be exchanged for \$635,000 preferred and \$1,527,500 common stock of the new company, and with the amount of common stock to be delivered to the syndicate, will result in a stock increase of \$472,500.

The present outstanding bonds aggregate \$2,306,500, of which \$410,000 is deposited as collateral with the floating debt, and \$280,000 is held by the trustee. These two sums, aggregating \$690,000, are to be released and cancelled, leaving \$1,616,500 of bonds to be provided for either by exchange or redemption.

The proposition is to issue bonds to the amount of \$3,300,000, the proceeds of \$1,440,000 and \$472,500 of stock, or \$1,152,000, as stated above, to be applied to the payment of the floating debt and the cost of extensions and betterments

during the years 1913 and 1914. The syndicate undertakes to procure the underwriting and sale of the bonds, provide bankers' and brokers' commissions, and to retire the underlying bonds of the constituent companies, for which latter purpose the \$1,860,000 of the proposed issue of bonds is reserved, or so much thereof as may be necessary.

The Commission has no doubt that the consolidation of these companies is the only feasible solution of the electric railway and lighting situation in the territory served by them, which is now in anything but a satisfactory condition. Hagerstown and its suburbs, with a population of over 25,000 people, and Frederick with a population of 12,000 to 15,000, are connected by lines owned by three separate companies, but the section owned by the Myersville and Catoctin Railway Company is leased to the Frederick Railroad Company, and the section owned by the Hagerstown and Myersville Railway Company is operated through stock ownership by the Hagerstown Railway Company, so that there are but two operating companies. The physical condition of the Myersville and Catoctin section, owing to lack of revenue, is poor, and is a serious detriment to the interurban service, which is by far the most profitable part of the traffic. The entire section served by the several roads is a rich and growing one, and is described by Mr. Peck and Mr. Harvey, of Allen & Peck, as being the most promising field in the East for electrical development, if properly managed in a progressive campaign for business. The combined operating expenses are high and could be greatly reduced under a single management, and it is estimated that within eighteen months from the present time the gross revenue would be doubled and ample to take care of the bonds, the estimated net revenue being more than one and a half times the fixed charges of the consolidated company. The new and up-to-date power plant at Security, which will be acquired by bringing the Frederick and Hagerstown Power Company into the consolidation, has ample output to supply the probable demand for some time to come, and has been constructed with reference to increased output at a minimum expenditure of capital.

Considering the whole situation as disclosed not only at the hearing but by the current records of the Commission, it appears that unless some such step as this is taken the existing companies will be unable to maintain their properties in condition to furnish safe and adequate service, and will be also confronted by financial difficulties which will result in heavy losses to those who have invested money in them, and in methods of reconstruction through possible foreclosure and reorganization that will be costly to the communities served which must ultimately bear the burden. In other words, the interest of the public requires that these properties be placed in efficient operating condition at once with the ability to extend the service in response to the public demand, if it can be done without imposing an undue burden upon the communities served. We see no reason to think that result would follow the adoption of the plan submitted. On the contrary, it seems to promise better service in the railway field and lower rates for lighting and power service in the near future. At all events, it offers the only solution of a very difficult situation, and it seems to us that it should be approved in the interest of the public who have come to rely upon these utilities for important conveniences and necessities of modern life.

Therefore, in the absence of objection sustained by proper evidence, the Commission will pass an order granting the prayers of the application, as soon as the agreement of consolidation is filed and the consolidated company is in existence to receive the authority which is invoked in its behalf in these proceedings.

**IN THE MATTER OF THE APPLICATION OF THE BALTIMORE AND  
OHIO RAILROAD COMPANY FOR AUTHORITY TO ISSUE ITS  
TWENTY-YEAR 4½ PER CENT. CONVERTIBLE GOLD BONDS  
TO THE AMOUNT OF \$63,250,000.**

**Case No. 558—Order No. 1095.**

*Decided February 28, 1913.*

**Authorization of Bonds—Jurisdiction of Commission—Inter-  
pretation of Public Service Commission Law.**

The Commission having petitioned\* the Circuit Court No. 2 of Baltimore City for an order enjoining the Baltimore and Ohio Railroad Company from issuing certain bonds without first obtaining the approval of the Commission and the Court having made an order requiring the Railroad Company to file with the Commission an application stating such facts as might enable the Commission to ascertain whether the proposed issue was in accordance with the Public Service Commission Law as interpreted by the Court, the Commission appealed from the order of the Court to the Court of Appeals of Maryland on the grounds that the Court's order was in legal effect a refusal to grant the injunction prayed for, and that the Commission's just authority was curtailed by the Court's narrow construction of the Law, confining the Commission's powers over security issues to an inquiry as to whether an issue was made for fictitious debts or for the inflation of securities, or for any fraudulent or dishonest purpose.

Pending the determination of the appeal the Commission refused to entertain the application of the Railroad Company for the Commission's approval of the proposed issue, which the Company had made pursuant to the order of the Circuit Court.

Thereupon the Railroad Company made another and independent application to the Commission and inasmuch as it appeared that the consummation of the financial arrangements in question must be reached before the appeal could be decided, the Commission granted the application, providing that its order should have no final effect until the determination of the appeal and that it should be considered as made in the full exercise of all the powers of which the Commission might finally be determined to be possessed.†

**ORDER.**

Whereas the Circuit Court No. 2 of Baltimore City did, on the 25th day of February, in the year 1913, pass an order

\*This petition was filed in pursuance of the Commission's Order No. 1083, printed in Commission Leaflet No. 15, at page 323.

†Editor's headnote.

in the cause therein depending of Philip D. Laird, et al., constituting the Public Service Commission of Maryland, against the Baltimore and Ohio Railroad Company, wherein a petition\* was filed by the plaintiffs praying that the said court enjoin the said Railroad Company from issuing its \$63,250,000 twenty-year four and one-half per cent. convertible gold bonds without first obtaining the approval of said Commission as required by the provisions of Chapter 180 of the Acts of the General Assembly of Maryland, commonly known as the Public Service Commission Law; and

Whereas, by the terms of said order and of the opinion of said court referred to in said order, the said Railroad Company was required to file with this Commission on or before the 26th day of February, in the year 1913, an application or report stating fully the facts in relation to the proposed issue of bonds and stock mentioned in said cause, and the purposes of the same together with such other facts as this Commission might require so as to enable this Commission to know or ascertain whether the said issues of bonds and stocks were or were not made in accordance with Section 27 of the Public Service Commission Law as interpreted in said opinion; and

Whereas, it was by said order of said court further ordered that should the said Railroad Company fail or omit to file such application or report or furnish such facts, or should this Commission find said issues not in accordance with said law, the plaintiffs were to have leave to move on one day's notice for an order as prayed under said bill; and

Whereas, this Commission feels that said order was in legal effect a refusal to grant the injunction prayed for by it and that it is entitled to appeal therefrom to the Court of Appeals of Maryland, and it has accordingly duly entered an appeal therefrom to said last mentioned court which it proposes to prosecute until the final determination by said last mentioned court or some other court of last resort of the issues raised by said order and opinion; and

\*This petition was filed in pursuance of the Commission's Order No. 1083, printed in Commission Leaflet No. 15, at page 323.

ings, this Commission attack  
 sion reached by said Circuit  
 in its said opinion and order  
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this Commission that such  
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approval of issues of stocks, bonds, and other evidences of indebtedness payable at periods of more than twelve months from the date thereof; and

Whereas, the said Railroad Company pursuant to said order of said court filed on the 26th day of February, in the year 1913, an application with this Commission asking its approval of said proposed issue of bonds, but this Commission is unwilling to act upon or even entertain the same while said injunction controversy is pending; and

Whereas, the said Railroad Company has this day filed another and an entirely independent application of the same tenor and has produced testimony before this Commission tending to show that the capital to be secured by said bonds is reasonably required for the purposes of the said Railroad Company as set forth in said last mentioned application; and

Whereas, this Commission has carefully considered said last mentioned application and testimony but is not willing to give its certificate to that effect until the final determination as aforesaid of the extent of its authority in relation to the approval of issues of stocks, bonds, and other evidences of indebtedness as aforesaid whether of the narrow nature set forth in said opinion and order of said Circuit Court No. 2 of Baltimore City or of the broader nature contended for by it and heretofore frequently asserted by it in relation to issues of such stocks, bonds, and other evidences of indebtedness; and

Whereas, in the opinion of this Commission after due hearing and examination the use of the capital to be secured by the issue of said bonds is reasonably required for the purposes of the said Company, to wit:

For the acquisition of property, the construction, completion, extension, improvement and maintenance of its facilities and service, and the discharge or lawful refunding of its obligations;

It is therefore, this 28th day of February, in the year 1913, by the Public Service Commission of Maryland,

*Ordered,* That the Baltimore and Ohio Railroad Company be, and it is hereby, authorized to issue and sell for cash upon the terms set forth in the foregoing application, its twenty-



year  $4\frac{1}{2}$  per cent. convertible gold bonds to the amount of \$63,250,000, bearing interest at the rate of  $4\frac{1}{2}$  per cent. per annum, to be issued under a trust indenture with the Central Trust Company of New York, Trustee.

And the said Company is further authorized to issue from time to time its common capital stock to an aggregate amount not to exceed \$57,500,000 in conversion of said twenty-year  $4\frac{1}{2}$  per cent. convertible gold bonds as in said bonds and trust indenture provided;

*Also*, That on or before the expiration of each period of six months from the date hereof and at such other times as may hereafter from time to time be prescribed by this Commission, the said Baltimore and Ohio Railroad Company shall report under the affidavit of its Treasurer and of its President or one of its Vice-Presidents, to this Commission all its acts and proceedings hereunder and the disposition made of any of said bonds or the proceeds thereof.

*Provided, however*, That this order shall have no final effect whatever until the final determination of the controversy involved in said appeal; and provided further, that when said controversy is finally determined, this order shall be deemed and taken as passed as of this date and in nothing less than the full exercise of all the powers of this Commission in the premises whatever may be under the provisions of said Public Service Commission Law as finally determined in said controversy.

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IN THE MATTER OF OBTAINING INFORMATION FROM PUBLIC  
SERVICE CORPORATIONS FOR THE USE OF THE COMMISSION.

Order No. 1126.

*Dated March 27, 1913.*

**Reports to Commission—Requests for Specific Information.**

In order to prevent the delays resulting from the requirement that the Commission's Chief Engineer shall secure an order of the Commission in cases where specific information is needed, it is

*Ordered*, That the Chief Engineer of the Commission be authorized to call upon public service corporations for such information as may be needed by him in the conduct of any investigation which he may have been di-

rected to make and that the public service corporations subject to the Commission's jurisdiction shall supply such information as completely as if the same were required by a special order of the Commission.\*

### ORDER.

This matter being under consideration by the Commission, and it appearing that in those matters which are referred to the Chief Engineer for investigation, much time is lost by the prevailing practice of requiring requests from the Engineer for orders in particular cases for specific information needed in the investigation, it is, therefore, this 27th day of March, 1913, by the Public Service Commission of Maryland,

*Ordered*, That the Chief Engineer of the Commission be, and is hereby, authorized in any matter which he may be directed by order of the Commission to investigate and report upon, to call upon the public service corporations under the jurisdiction of this Commission for such information as may be needed by him in the course of his investigations; and the public service corporations under the jurisdiction of this Commission are hereby directed to supply all such information as may be demanded by said Chief Engineer, within the time specified in the demand, as fully and completely as if the same were required by a special order of the Commission in the premises.

*Ordered further*, That the Chief Engineer shall in all cases file a copy of the requisitions made upon corporations in the proceedings to be affected thereby.

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\*Editor's headnote.

## **MASSACHUSETTS.**

### **Board of Gas and Electric Light Commissioners.**

#### **BARNSTABLE APPEAL.**

*Decided March 4, 1913.*

#### **Public Convenience and Necessity—Invasion of Field Already Occupied—Duties of Existing Company.**

Upon an appeal by the Buzzards Bay Electric Company from a decision of the selectmen of the town of Barnstable, authorizing the Barnstable Electric Company to operate in the fire district of Hyannis, the Board found that, although the Buzzards Bay Electric Company was engaged in the manufacture and sale of electric light in Barnstable at the time of the decision appealed from, it had no such priority as would make this fact alone controlling in the decision of the appeal, and held that the question to be determined was whether public necessity or convenience called for the admission of the Barnstable company into territory already occupied by another company able and willing to perform its duties. It was further found that the Buzzards Bay company had planned and was undertaking in good faith to supply this territory as rapidly as the growth of its business warranted and, having irrevocably professed its public calling in the district of Hyannis, could not thereafter legally refuse to supply electricity throughout the town of Barnstable.

*Held:* That the decision of the appeal does not depend so much upon the interests of the fire district or upon the interests of the two companies concerned, as upon the determination of the question whether there should be two companies engaged in the same business in the same territory.

That the Board has been given ample authority over the question of price and service, irrespective of the particular company which may undertake to furnish service.

That experience has shown that for the purpose of supplying such a scattered territory as that in question with a maximum of efficiency and economy, a single company with a properly located central station is preferable to numerous companies with independently operated stations, each the centre of a small area of supply.

That the burden of demonstrating that a public need exists for its entrance into the field is upon the company seeking privileges.

That it is the duty of the Buzzards Bay company to supply electricity throughout the town of Barnstable, as well as in other territory, to all who may reasonably demand service.

That although certain prospective consumers evidently preferred to be supplied by the Barnstable company, it was not shown to possess any facilities superior to those of the Buzzards Bay company, whose service had been satisfactory.

That the public necessity and convenience do not require the admission of the Barnstable Electric Company.

*Ordered*, That the appeal be sustained and that the decision of the selectmen of the town of Barnstable be annulled.\*

This is an appeal, under the provisions of section 27 of chapter 121 of the Revised Laws, by the Buzzards Bay Electric Company from a decision of the selectmen of the town of Barnstable giving to the Barnstable Electric Company permission to construct and use lines for the transmission of electricity upon and along certain public ways therein named in that part of the town known as Hyannis.

After due notice public hearings were held in the village of Hyannis, at which the two companies named were represented by counsel.

The Barnstable Electric Company is a corporation organized under the general laws of the Commonwealth on November 10, 1911, for the purpose of "making, transmitting and selling electricity for light, heat and power in the town of Barnstable and also in the town of Yarmouth \* \* \* and of owning and operating works therefor." Its incorporators are also interested in the Barnstable Water Company, which was established by chapter 286 of the Acts of 1911 "for the purpose of supplying the inhabitants of the town of Barnstable or any part thereof with water." The water company began the construction of its works and mains in the early summer of 1911, and is now supplying the village of Hyannis.

The Barnstable Electric Company proposes to lease a portion of the water company's pumping station for the installation of a 60-kilowatt electric generator, and to purchase from that company power for operating it. It has at the present time no plant and has issued no capital stock, but it has applied for the approval of an issue of stock of the par value of \$10,000 to provide for the generator mentioned and other necessary station equipment, and for constructing a distributing system in the village of Hyannis.

The Buzzards Bay Electric Company was originally incorporated under another name for the purpose of making,

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\*Editor's headnote.

selling and distributing electricity on the island of Martha's Vineyard. Before engaging in business on that island it adopted its present name and changed the location of its business to Falmouth, where it began the supply of electricity in 1909. On November 7, 1911, after a public hearing, it was duly authorized by this Board, under the provisions of chapter 197 of the Acts of 1910, to carry on the business for which it was incorporated in Barnstable, Sandwich and a portion of Bourne. By chapter 460 of the Acts of 1912 the Legislature extended its powers to enable it "to engage in the business of making, selling and distributing gas for all purposes permitted by law in the town of Barnstable," and it has now pending before this Board, in accordance with the provisions of said act, an application for the final authority necessary to enable it to exercise its gas supply powers, the interests controlling this company having acquired the ownership of the gas plants now operated in the villages of Hyannis and Cotuit.

This company had on June 30, 1912, a plant of a book value of \$74,508.34, and other assets of \$25,211.90, and was then engaged in the construction of a generating station at Falmouth Harbor designed for a capacity of 1,500 kilowatts. Its lines now reach Woods Hole and Waquoit on the south shore of Falmouth, and Monument Beach at the head of Buzzards Bay. It is also supplying, from an independent electric plant, certain customers in the village of Cotuit in the town of Barnstable. Its avowed purpose is ultimately to extend its lines in Bourne and Sandwich, also through Mashpee to the villages of Cotuit, Osterville, Hyannis, Barnstable and West Barnstable, all in the town of Barnstable. Its plan also contemplates the supply of Yarmouth and certain towns to the eastward.

The village of Hyannis is incorporated as a fire district, with authority, among other things, to light its streets, and its affairs are managed by a prudential committee. This committee early in the summer of 1911 began to consider, with the representatives of the Buzzards Bay company, the advisability of lighting by electricity a portion of Sea Street, which connects the villages of Hyannis and Hyannisport. On

November 18, 1911, the company was duly authorized by the selectmen to erect and maintain wires upon certain telephone poles on Sea Street, and on November 24, 1911, it began to supply street lights on that street, which were for a time subsequent thereto paid for by the fire district. Under the same permit from the selectmen it has also supplied certain private customers.

Very soon after the Barnstable Electric Company was organized it applied to the selectmen for locations for lines to supply the village of Hyannis. No action was taken on this application, however, pending an investigation instituted by the fire district of the electric lighting problem. Following this investigation the fire district advertised for proposals for both street and commercial lighting. Both of the companies interested in this case submitted bids. The fire district, after receiving these bids, voted on May 29, 1912, to authorize a five-year contract with the Barnstable Electric Company for street lights. On June 10 this company filed with the selectmen an application for locations for its lines in the village of Hyannis. This application was granted July 6, 1912, and from that decision this appeal is taken.

The action of the fire district looking to the entrance of this company was apparently based upon a belief that it had offered the more favorable terms for its service, especially for street lighting. A close comparison of the prices named by the two companies, respectively, as applied both to the commercial and public use of electricity, does not make this advantage so obvious. The question of price and service, however, is one over which this Board has been given ample authority, irrespective of the particular company which may undertake the supply, and it is the policy of the State to secure, by supervision and regulation, reasonable provisions as to both rates and service.

At the outset it is of importance to note that the action of the selectmen in legal effect expresses their consent to the erection and maintenance of the lines of the Barnstable Electric Company, not merely in the streets of Hyannis which are named, but generally in the streets of the town of Barnstable; and if this appeal is dismissed and the de-

cision of the selectmen affirmed, the jurisdiction of this Board is exhausted, and the right of the Barnstable Electric Company to engage generally in the distribution and sale of electricity in the entire town of Barnstable is settled conclusively so far as this Board is concerned. The company thereafter can sell to any one within reach of its proposed lines, may extend them whenever and as far as the selectmen shall grant the necessary street locations therefor, and it may be its duty to so extend them.

The decision of this appeal depends not upon the interests of the fire district alone, and still less upon the interests of the two companies concerned. It is not merely a question as to which of the two companies shall do the electricity supply business in the town of Barnstable, but whether to the company already there a second company for the same purpose shall be added, so that there shall be two companies engaged in the same business in the same territory.

Companies of this kind, although formed with the expectation of private profit, are organized primarily to perform a public service. Their peculiar privileges in the public streets necessary for the economical conduct of their business are granted, not for the purpose of promoting private speculation, but solely to enable them to meet in a reasonable way the public necessity or convenience. The burden is upon every company seeking them, whether it be the first in the field or second, to demonstrate that it is there solely to supply a public need. The selectmen, acting as public officers, permit or refuse the application of even the first company to occupy the public streets according to what in their judgment the public convenience requires, and they have an entire right to refuse in their discretion such use to any and every company if in their opinion the public interest so demands. It is true that the Buzzards Bay company was in fact engaged in the manufacture and sale of electric light in the town of Barnstable at the time of the decision of the selectmen upon which this appeal is based, and that it is thereby enabled to bring the appeal, but it has no such priority in Hyannis as to make this fact alone controlling in the decision of this case. The issue in this case, however,

is whether the public necessity or convenience under all the circumstances calls for the admission of the Barnstable company into territory already occupied by another company able and willing to perform its duties.

It appeared at the hearing that before this controversy arose the Buzzards Bay company had planned and was undertaking in good faith the supply of this territory as rapidly as the growth of its business warranted. Its plans included not only the town of Barnstable with its many villages, of which Hyannis is one, but ultimately Yarmouth and other towns lying to the east of Barnstable. Already it had met with the favorable consideration of the selectmen of Barnstable and the authorities of the fire district of Hyannis. While its investment and business in Hyannis in November, 1911, were small in amount, yet it had irrevocably professed there its public calling, and could not thereafter have legally or properly refused to supply electricity throughout the town of Barnstable to all who might reasonably demand its service.

Before the Buzzards Bay company established itself on the Cape in 1909, there was but one electric company serving any part thereof, namely, the Cape Light, Heat and Power Company of Provincetown. That portion of the Cape lying east of the line of the canal, and excluding the towns of Provincetown, Truro, Wellfleet and Eastham, has a permanent population of about 20,000. In the summer this population is greatly increased by residents on the north and south shores and on Buzzards Bay, but in winter and summer the population is widely scattered among many small villages, and there is comparatively but little manufacturing. There has seemed to be a demand throughout this territory for a supply of electricity, although the field for such a supply is hardly equivalent to one of the smaller cities or large towns of the Commonwealth. Experience has shown that to supply such a scattered territory with a maximum of efficiency and economy a single company with a properly located central station is preferable to numerous companies with independently operated stations, each the center of a small area of supply.



It is clearly the duty of the Buzzards Bay company to supply throughout the town of Barnstable, as well as its other territory, electricity to whoever may reasonably require it, and there was no claim at the hearing that it lacked either the ability or the disposition to do this. The evidence was that where it had supplied, its service had been satisfactory. No superior facilities were shown or claimed to exist in the Barnstable company, although there was an evident preference by certain prospective consumers to be supplied by that company.

Under all the conditions, in the opinion of the Board it does not appear that the public necessity and convenience require the admission of the Barnstable Electric Company, and the appeal should therefore be sustained. The following is adopted:—

In the matter of the appeal of the Buzzards Bay Electric Company from a decision of the selectmen of the town of Barnstable adopted on July 6, 1912, granting to the Barnstable Electric Company permission to construct and use lines for the transmission of electricity upon and along certain public ways in that part of the town of Barnstable known as Hyannis,—

*Ordered*, That said appeal be sustained, and that the said decision and order of the selectmen of the town of Barnstable be annulled.

## NEBRASKA.

### State Railway Commission.

IN THE MATTER OF THE APPLICATION OF THE OMAHA, LINCOLN AND BEATRICE RAILWAY COMPANY FOR AUTHORITY TO ISSUE TWO MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS (\$2,250,000) PAR VALUE OF ITS FIVE PER CENT. (5%) BONDS AND EIGHT HUNDRED FIFTY THOUSAND DOLLARS (\$850,000) PAR VALUE OF ITS STOCK.

Application No. 1651.

*Decided February 25, 1913.*

**Public Convenience and Necessity—Jurisdiction of Commission—Competition—Authorization of Stock and Bonds—Cost of Financing—No Guarantee Implied by Authorization—Valuation of Property for Rate-making Purposes. [Ed.]**

**SYLLABUS:** While the Commission, under the constitutional amendment creating it, might, in the absence of specific legislative enactment restricting it, and in the exercise of its authority in the approving of stock and bond issues, withhold its approval of such issues of a proposed competing public utility, on the ground that the public convenience did not require the construction of such utility;

*Held,* That the exercise of such authority involves such grave responsibility and is so far-reaching in its effects that the Commission will not exercise it unless specifically directed so to do by the legislature;

*Held further,* That were the Commission to assume such authority, the facts developed in this case, upon the petition of intervention of the receiver, and bondholders of a partially competing utility, would not justify the Commission in withholding its approval of applicant's petition on such ground.

Upon petition for authority to issue bonds and stock, to provide funds for the construction of an interurban railway,

*Held,* That the questions for the Commission to determine are, whether the purposes for which it is desired to expend the proceeds of such securities, will promote the public weal, are within the terms of the statute, to wit, "for the acquisition of property, the construction, completion, extension or improvement of facilities, or for the improvement or maintenance of its service, or for the discharge or lawful refunding of its obligations," and are "reasonably required for the said purposes";

*Held further,* That the construction of the line in question is for the

public good, and the securities applied for should be approved subject to the conditions specified in the order.

The rule of caveat emptor applies to purchasers of securities authorized by this Commission. Such purchasers are not exempt from the business risks involved in the possibility of the corporation issuing the securities being over-capitalized.

The approval by the Commission of the issuance of securities does not constitute a guaranty in any way that rates may be charged by such corporation to enable it to pay dividends at any given rate upon its entire capitalization.

Whenever the Commission is called upon to exercise its rate-making power, its action will be controlled by the amount of money shown to have actually been invested and the fair value of the property devoted to public uses, regardless of the amount of securities outstanding.

#### Appearances:—

*Harvey Musser*, for Applicant.

*Brown, Baxter and Van Dusen and Brome and Brome*, for Intervenor, Receiver, Bondholders and Creditors of The Nebraska Traction & Power Company.

#### OPINION.

CLARKE, *Chairman*.

On January 3, 1913, the applicant herein filed its petition requesting an order of the Commission authorizing it to issue its five per cent. bonds in the amount of Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000), and its capital stock in the amount of Eight Hundred Fifty Thousand Dollars (\$850,000), for the purpose of constructing and equipping its projected line of railway between Omaha and Lincoln, Nebraska.

Public notice of said application was given and a hearing had at the office of the Commission on January 15th, 1913. Many petitions were filed with the Commission by citizens and various organizations in the cities and towns on or near the proposed line, urging its construction and that favorable action be taken by the Commission in authorizing it to issue such securities as it might deem just and proper.

On January 21, 1913, following the hearing upon the application, attorneys for the bondholders' committee of the Nebraska Traction & Power Company and for the receiver

and creditors of said company filed a motion protesting against the approval of said securities, the grounds for such protest being substantially as follows: 1. That the Nebraska Traction & Power Company already has an electric railroad running from Omaha to Papillion, which to all intents and purposes parallels the route of the proposed Omaha, Lincoln & Beatrice line. 2. That this railway, as now constructed and equipped, furnishes adequate facilities for the accommodation of the public in carrying passengers and express between the village of Papillion and the cities of South Omaha and Omaha. 3. That the business between these points is now divided between the Nebraska Traction & Power Company and the Union Pacific Railway Company, and to allow the construction of another line will operate to so materially reduce the revenues of the Nebraska Traction & Power Company as to compel it to operate at a loss, or abandon its property. 4. That at small expense it would be possible to make changes in grade and slight changes in route of the line of the Nebraska Traction & Power Company, so as to meet and fulfill the plans and purposes of the Omaha, Lincoln & Beatrice Railway Company for a high grade through line from Papillion to South Omaha, and at a cost much less than that necessary for the construction of an entirely new line. For these and other reasons the intervenors ask the Commission to withhold approval of the stocks and bonds of the Omaha, Lincoln & Beatrice Railway Company, save and except that such approval be conditioned upon the purchase by the Omaha, Lincoln & Beatrice Railway Company of the existing property of the Nebraska Traction & Power Company, at a fair and reasonable price to be determined after a full hearing before the Commission.

A hearing on this motion was had before the Commission on January 22nd and 23rd, 1913, at which testimony was received from the civil engineer who had charge of the survey and the establishment of grades of the Nebraska Traction & Power Company, the receiver of the company, and numerous residents of Ralston, Papillion, Homestead and Omaha.

The motion of the intervenors is an assumption that the Commission has authority to prohibit the building of a com-

peting public utility if it shall appear that the construction of such utility is not a matter of public necessity and convenience. Such authority is exercised by the Commissions of a number of States, notably Wisconsin and New York, having been conferred upon them by statutory provisions, and it is possible that under the act of the constitution creating this body this Commission would be justified in claiming that jurisdiction, but the authority involves such grave responsibility and is so far-reaching in its effects that we do not care to assume it unless specifically directed so to do by the Legislature.

After considering the evidence adduced at the hearing, the Commission is clearly of the opinion that the motion of the intervenors should not be granted. The Omaha, Lincoln & Beatrice Railway Company has already purchased right-of-way, made surveys, constructed a grade, and made other substantial investments involving an expenditure of upwards of sixty thousand dollars (\$60,000) on the line starting at South Omaha and extending westward toward Papillion and the Platte River, a considerable portion or all of which would have to be sacrificed and abandoned should the route be changed to the lines suggested by the intervenors. This work was done and this expenditure incurred in the year 1906, five years previous to the building of the line of the Nebraska Traction & Power Company. In the matter of priority, therefore, the advantage is clearly with the Omaha, Lincoln & Beatrice. Moreover, the original articles of incorporation of the Omaha, Lincoln & Beatrice plainly indicate that it was the purpose of that company to build a through line between Lincoln and Omaha, while it is apparent, if the character of its present line is any criterion, that the object of the incorporators of the Nebraska Traction & Power Company was not to construct a high grade, through line connecting these points, the route, as indicated in their articles of incorporation, extending only from Omaha to Ralston and thence in a southerly direction through Sarpy County; no terminal point being named. The road, as a matter of fact, was first built to Ralston and later extended to Papillion. It is a matter for serious doubt on the part of the Commission whether the

route now followed by the Nebraska Traction & Power Company is feasible for a modern, high-speed, interurban, such as is contemplated by the Omaha, Lincoln & Beatrice. The intervenors concede that it could not be made so without extensive alterations in grade, involving a considerable expenditure of time and money, and it is also admitted that over two miles of the line would have to be abandoned in order to secure a satisfactory entrance into the city of Omaha. To require the applicant to sacrifice sixty thousand dollars (\$60,000) worth of its own property and acquire a line, a portion of which it could not use and most of which is unsuited to its purpose, would obviously be inequitable and unjust. So objectionable is the route of the Nebraska Traction & Power Company from an engineering standpoint that Mr. Musser, arguing for the applicants, asserted that his company would prefer to re-establish its line so as to avoid Papillion, rather than attempt to adopt it to the class of road proposed by him. Nor is it by any means certain that the construction of the defendant's line would seriously impair the revenue of the Nebraska Traction & Power Company, for the reason that after leaving Papillion it would not touch Ralston or Homestead, and would therefore be a competitor of the intervenors at Papillion only. A portion of the Papillion traffic would undoubtedly be diverted to the new line, but it does not seem probable that this decrease in revenue would be sufficient to imperil the existence of the road already in operation, particularly since the new line cannot be placed in operation inside of two years, during which time the traffic at Ralston and the other points would probably be increased to a point where the anticipated loss would be largely overcome.

This corporation was organized in March, 1903, with an authorized capital stock of two hundred thousand dollars (\$200,000). Its articles of incorporation made no limitation on the amounts of its indebtedness.

On May 12, 1904, the applicant, pursuant to the unanimous approval and direction of all the subscribers to its capital stock, and directors filed with the Secretary of State of Nebraska amended articles, increasing the capital stock

of the company to two million two hundred fifty thousand dollars (\$2,250,000). Public notice of such action was published for sixty days, as required by law.

The location and termini of the road, as set forth in the articles of incorporation, "shall be Omaha, Douglas County, Nebraska, and a point at the southwest corner of Gage County, Nebraska, said line to run through the city of Lincoln, with authority to construct such branch lines in said state of Nebraska as may hereafter be determined; said main line to run through the counties of Douglas, Sarpy, Cass, Saunders, Lancaster and Gage, and, if the actual survey shall render such location necessary, through Johnson, Pawnee, Saline or Jefferson County."

The applicant started the construction of its line, purchasing and contracting for right-of-way and now has equipped and operating approximately five and one-half miles of road between the city of Lincoln and the cities of Bethany and University Place. It also has a considerable amount of right-of-way and road-bed already constructed near South Omaha. The moneys spent and invested on the eastern end of its line, which is not now in use but which will be utilized upon the completion thereof, aggregate as heretofore referred to, approximately sixty thousand dollars (\$60,000).

The general balance sheet filed by the applicant with the Commission November 25, 1912, through its president and secretary, for the year ending June 30, 1912, is as follows:

<i>Assets.</i>	
Cost of railway:	
Roadbed and tracks .....	\$112,419.45
Electric line construction, including poles, wiring, feeder lines, etc.....	23,723.82
Engineering and other expenses incident to construction .....	22,002.25
TOTAL COST OF RAILWAY OWNED .....	\$158,145.52

## Cost of equipment:

Car and other rolling stock.....	\$10,773.12
Electric equipment of same.....	5,209.43
Other items of equipment:	
Electric locomotive	
Electric equipment } .....	6,932.23

TOTAL COST OF EQUIPMENT OWNED..... \$22,914.78

## Cost of land and buildings:

## Other permanent property:

R. of W. not in use.....	\$85,068.51
B. H. lighting system.....	4,977.50

TOTAL COST OF OTHER PROPERTY OWNED..... 89,046.01

TOTAL PERMANENT INVESTMENTS..... \$270,106.31

## Cash and Current Assets:

Cash ..... \$1,022.33

TOTAL CASH AND CURRENT ASSETS..... 1,022.33

## Miscellaneous Assets:

Materials and supplies..... \$2,732.10

TOTAL MISCELLANEOUS ASSETS..... 2,732.10

TOTAL ..... \$273,860.74

*Liabilities.*

Capital stock, common, subscribed..... \$200,000.00

TOTAL CAPITAL STOCK..... \$200,000.00

## Current liabilities:

Loans and notes payable..... \$64,693.47

Audited vouchers and accounts..... 3,525.00

Salaries and wages..... 950.00

TOTAL CURRENT LIABILITIES..... 69,168.47

## Accrued liabilities:

Taxes accrued and not yet due..... \$350.00

TOTAL ACCRUED LIABILITIES..... 350.00

Profit and Loss Balance—Surplus..... 4,342.27

TOTAL ..... \$273,860.74



The president of the company under oath states that the total of \$273,860.74, shown in the asset column of said sheet, is actual money spent in the organization, engineering and construction of its line.

The engineering department of the Commission has made a detailed valuation of the property now in actual operation, to-wit, between Lincoln and Bethany, and reports its value, as of July 1, 1911, as follows: Reproduction new, \$204,492.14; present or depreciated value, \$178,101.04.

This portion of the line has been operated since about August, 1906. The completion of the line was discontinued at that time by reason of the death of Henry Robinson, who was financing the company. Until this time his estate and associates have been unable to secure the capital needed to complete the line.

On December 30, 1913, the Northern Construction Company, of Detroit, Michigan, offered in writing to complete the construction of said line from Lincoln to Omaha, and completely equip the same ready for operation, in consideration of the delivery to the said Construction Company of eight hundred fifty thousand dollars (\$850,000) par value of the common stock and two million two hundred fifty thousand dollars (\$2,250,000) par value of the thirty-year five per cent. (5%) gold bonds of said company.

While the time set within which the applicant should accept said offer has passed, the Commission is advised by the applicant that it remains open, and if necessary authority is granted the road will be constructed and ready for operation on or before January 1, 1915.

The applicant filed with the Commission its preliminary engineering plans, drawings, specifications and maps, which the Commission's engineers state are as complete in form and detail as those usually required of railroad engineers by their finance committees or executive officers for approval prior to entering upon the actual work of construction.

The cost of the completed property, as disclosed by these estimates, is:

Tangible property, including labor.....	\$2,379,445.00
Engineering, superintendence, legal and administration expenses, 10% of \$2,124,445.00.....	212,444.00
Contingencies, 5% .....	106,222.00
Interest on money during construction, 6%, two years..	160,000.00
Discounts and commissions .....	404,790.00
Total .....	<u>\$3,238,300.00</u>

Mr. Hurd, Chief Engineer for the Commission, when questions under oath as to whether he had examined and checked the data and estimates submitted by the applicant, stated:

A.—I have. I was the engineer who was originally employed by Mr. Robinson to place the property, and am very familiar with all the estimates that ever have been made on it, and I had several made very carefully myself at different times. We had a very complete amount of engineering information, surveys, etc., to base it on, and this present estimate of these construction companies' engineers is built up largely on the quantities that we found to be proper, modified to the extent of a little wider embankments and a little more expensive construction on almost every item. That is, the embankment is wider, the weight of the rail is heavier, and of course the cost of all the material and labor from the time of my last estimate to this estimate would somewhat change, and I think there has been allowance for that, and there is more in equipment and considerably more power provided for at the central station than was provided for in any former estimate which I made, so using that as a basis, which I consider as accurate as could be made by a preliminary investigation prior to the actual placement of the property as to cost, I could not suggest a very great deal of change about it one way or the other. Of course any preliminary estimate is subject to modification in its parts or in its entirety, after the property is actually placed, but from the best engineering advice we can bring to bear on it, I cannot say that I can criticise it severely in any way.

Q.—Exclusive of the general overhead items, such as superintendence, organization, legal expenses, engineering, contingencies, interest during construction, and discounts and commissions for financing, can you state what you would think a reasonable estimate for the cost of this property would be as outlined in their plans and specifications?

A.—I consider that their figures there are not very far off.

Q.—You think the actual cost of the property, exclusive of the items I have mentioned, with the possible exception of donations of real estate of right-of-way, will approximate \$2,379,445?

A.—I deem that estimate fairly proper.

The percentages for engineering, superintendence, legal and administration expenses, contingencies, interest during construction, discounts and commissions are those usually applied to the estimates of cost of the physical property in order to determine the approximate final costs. The final cost may be more and it may be less.

Prior to entering upon the work of construction, it is proposed that said bonds, in the sum of two million two hundred fifty thousand dollars (\$2,250,000), bearing interest at the rate of five per cent. (5%), payable semi-annually, secured by trust deed, running to the Equitable Trust Company, of New York, or to such other trust company as may be substituted therefor, equally responsible, and said stock in amount of eight hundred fifty thousand dollars (\$850,000), par value, be delivered to the construction company; that the construction company shall not sell any portion of said bonds or stock so acquired to the public in general until the line of road herein contemplated shall have been completed, but that said construction company shall have the right to pledge said bonds and stock as collateral security for the purpose of securing moneys for the carrying on of the construction, equipping and completion of the said line.

Such proposition does not appeal to the Commission as properly safeguarding the applicant or the public. We are of the opinion that the securities in question should only be delivered to the construction company in such amounts from

time to time as it is made to appear to the Commission, upon the certificate of the proper officer of the applicant and the Commission's engineer, showing that an amount of money equal to or greater than the amount of securities so required has been expended in the construction and equipping of said line.

If it is desired by the applicant to place the said securities in the hands of the Equitable Trust Company of New York, or some other trust company of like standing, same to be delivered to the construction company in such amounts and at such times as the Commission may by special order authorize, it will be approved by the Commission.

It may develop, upon entering upon the actual construction of said line, that the applicant may deem it necessary, in the exercise of good business judgment, to modify its present plans, thereby decreasing or increasing the actual cost of the property.

The Commission is of the opinion that the applicant or trustee should be authorized to deliver to the construction company, at periods of not less than thirty days each, the securities of the applicant in the proportion of seventy-eight per cent. (78%) of bonds and twenty-two per cent. (22%) of stock, equal to ninety per cent. of the amount of money shown by the certificate of the applicant and Commission's engineer to have been actually expended on the property, including interest during construction and an allowance of twelve and one-half per cent. (12½%) for financing, which is submitted in the estimates under the head of "Discounts and Commissions."

For example, if the said certificate shows the actual moneys expended and previously unreported aggregate one hundred thousand dollars (\$100,000), the amount of securities to be delivered to the construction company, including twelve and one-half per cent. (12½%) for cost of financing, will in round figures approximate eighty thousand one hundred fifteen dollars (\$80,115) of bonds and twenty-two thousand seven hundred thirty-five dollars (\$22,735) of stock.

It is not proposed to issue any securities on account of the cost of the property already constructed, which is included

in the estimate, until such time as the entire line is completed and in operation.

Upon the filing with the Commission of the proper certificate by the applicant and the Commission's engineer, showing the completion and equipping of the line ready for operation, the Commission will authorize the issuance and delivery to the construction company, in the proportions above set forth, the said securities sufficient in amount as to cover: First, all moneys expended by it during construction for which it has not received consideration; second, the cost of the existing property for which no securities have been issued; third, the fair and reasonable value of any services performed in the organization and construction of said line, not previously accounted for.

The Commission, by reason of the magnitude and importance of the proposition herein involved, deems it proper and necessary to require the construction company to keep within the State of Nebraska, subject to the inspection of the Commission, its books, papers and vouchers showing in detail all the items of cost of construction of said line.

In the allowance of the twelve and one-half ( $12\frac{1}{2}$ ) per cent. for financing a proposition such as the one under consideration, the Commission is not to be understood as taking the ground that such an allowance is proper in every case. Each case must stand on its own merits. If a person or group of persons, or a corporation, were to build this line from the funds at their disposal, without being compelled to resort to banks, trust companies or brokerage houses, to place their securities in order to raise the money necessary to finance the project, we would have an ideal situation, which would obviate the necessity of considering or making allowance for financing coming under the head of discounts and commissions.

Such is not the case at hand. The applicant, after years of effort in attempting to finance its proposition, has at last succeeded in finding a construction company, which will undertake the construction and equipping of the line on the basis of the estimate heretofore set forth. This construction company in turn will not only have to use its own credit and resources, but will be compelled to place the securities re-

ceived from applicant with banks or trust companies as collateral to secure the moneys necessary to complete the undertaking as the work progresses. When we consider the character of this undertaking, the element of risk, the fact that the bonds run for thirty years on the one hand, and on the other hand that the farmer in this state is required to pay from one to two and a half per cent. (1 to 2½%) commission for obtaining a five year farm mortgage loan, on forty per cent. of the value of his land, we hold the allowance just and reasonably necessary.

It may be contended that the Commission, in the exercise of its discretion, should not authorize the issuance of any amount of bonds on a property, and particularly in the amount herein authorized, unless it is clearly satisfied that the operating revenues of the applicant will be sufficient to provide a reasonable net income over and above its expenses, taxes and the fixed charges on its bonds. This would be undoubtedly true if the authority granted by the Commission to issue such securities carried with it any guarantee on the part of the state that the earnings of the company would be sufficient to pay any given return on the money invested in the property. The statute under which we are operating authorizes the Commission only to determine whether or not the issuance of the securities applied for are reasonably necessary for the acquisition of property, the construction, completion, extension or improvement of facilities, or the improvement or maintenance of its service, or for the discharge or lawful refunding of its obligations, and the fact that a part of the stock of a corporation outstanding at any time has been issued with the approval of the Commission, cannot be held to constitute a guaranty in any way that rates may be charged by such corporation to enable it to pay a dividend at any given rate upon its entire capitalization.

If we were satisfied that this project could be financed on a more favorable basis, both as to the proportion of bonds to the total capitalization and the discounts and commission for securing the needed money, we would unhesitatingly insist on the more favorable basis, but in the absence of such

we cannot refuse the applicant the necessary authority, under the facts disclosed in this case.

The New Hampshire Commission, in passing upon the petition of the Milford Light & Power Company to issue certain securities, decided December 30, 1911,\* had occasion to pass upon a statute similar to our own. In the course of its opinion it held:

"The purpose of placing issues of stock and bonds by public utilities and railroad corporations under the supervision of the Commission is not indicated in the statute except by the provision that

'Upon petition.....the Commission shall, after public notice and hearing, determine the amount of stocks or bonds which in its opinion is reasonably requisite for the purposes for which the issue is to be made.'

The inclusion of this provision in the statute was doubtless caused by the belief that in the past public service corporations have sometimes issued capital stock greatly in excess of the value of their properties devoted to public uses, and have then sought to collect from the public rates sufficient to enable them to pay dividends upon all of such stock. To prevent issues of stock or bonds in the future for speculative purposes or to afford opportunities for promoters' profits beyond the fair value of services in promotion, we take it to be clearly the purpose of the statute. Beyond that we do not take it that we can go consistently with the best interests of the public.

The fact that a utility has outstanding stocks and bonds to a greater amount than the value of its plant and work does not enable that utility to make additions and improvements without cost. If it does not have money in its treasury with which to make such improvements the only practicable way in which it can secure the same is to issue securities. If additions and improvements are reasonably necessary to enable it to meet the demands of the public for service, the public good demands that such securities shall be issued wholly irrespective of the amount of securities already outstanding.

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\*Printed in Commission Leaflet No. 3, at page 22.

When an application is made to this Commission for authority to issue securities, we take it that the questions for the Commission to determine are whether the purposes for which it is desired to expend the proceeds of such stock or bonds are such purposes as will promote the public good, and whether the amount of securities proposed to be issued is reasonably requisite for those purposes. The kind of securities and the form in which they are to be issued may also be subject to the supervision of the Commission.

Inasmuch as the approval of a proposed issue of securities for any purpose does not involve a determination that the property of the corporation making such issue devoted to public uses is fairly worth the total amount of its securities outstanding. It follows that such approval cannot at any time be urged as a reason for allowing the corporation to charge rates sufficient to enable it to pay dividends at any given rate on such securities.

Whenever the Commission is called upon to exercise its ratemaking powers it must be governed by the fair value of the property devoted to public uses in the performance of the service for which a rate is to be fixed. In determining such fair value the amount of stocks and bonds outstanding, if entitled to consideration at all, is entitled to very slight consideration, and the question whether the issuance of such stock and bonds or any part of the same has been with the approval of any regulatory Commission, cannot be entitled to any weight at all, because it will not be relevant to the question of the fair value of the property involved."

In other words, the rule of caveat emptor applies to an investor purchasing the securities, the issuance of which is regulated by a commission. So far as we are advised, this rule is applied by all commissions administering similar laws.

By reason of the public interest in the question at hand, we deem it pertinent to quote the following quotation from the report made November 1st, 1911, to the President of the United States by the Railroad Securities Commission:

"Many, if not most, of the abuses connected with railroad securities arise out of an almost universal failure to recognize the distinctions which exist and should exist between bonds



and stocks. A bond is an obligation to pay a fixed sum of money at a stated time. A stock certificate is merely the evidence of ownership of a share in the property, profits, and risks of a corporation. Most of the evils of which investors and the public complain have grown out of the attempt to give to stock a face value in terms of money. Even if the state laws prohibiting the issue of stocks for less than par were literally enforced all that the recitals on the face of a fully paid share of stock as to its par or money value would signify is that at the time of the issuance of the share there had been paid into the corporation an amount of money (or other valuable consideration) equal to the par value of the share. They do not even purport to indicate that at any time after the original issue of the stock the corporation was possessed either of the money or the money's worth. The real value of the stock certificate depends upon the manner in which the money has been invested. *The Commission, is, therefore, of the opinion that it is far more important to ascertain just what are the facts connected with the issue of securities and what is actually done with whatever money has in fact been realized from the stock which is issued, than merely to make sure that the par value of the stock was paid in at the time of issue.*

If we were compelled to assume that rates are to be materially influenced either in their making by the railroads or in their regulation by the Government by the amount and face value of the stocks and bonds outstanding, it seems to your Commission impossible to escape the conclusion that these securities should be issued only under governmental regulation. Your Commission, however, believes that the amount and face value of outstanding securities has only an indirect effect upon the actual making of rates, and that it should have little of any weight in their regulation.

Insofar as the value of the property is an element in rate regulation, the outstanding securities are of so little evidentiary weight that it would probably be of distinct advantage if courts and commissions would disregard them entirely, except as a part of the financial history of the property, and would insist upon direct evidence of the actual money invested and of the present value of the properties."

While, as above stated, the jurisdiction vesting in the Commission, the power to regulate the issuance of securities does not constitute a guarantee of any given return on such investments, it goes without saying that it may be and should require a reasonable showing that the earnings of any given project, in such cases, (reasonable allowance being made for sufficient time to develop its business) will be sufficient to pay its operating expenses, taxes, depreciation charges and interest on bonds.

This showing was made to the Commission, and is included in this report as a matter of public interest, and a possible guide to investors. The Falkenau Electrical Construction Company of Chicago, in its report on the proposed project, dated June 6, 1907, which was two years prior to the taking effect of our Stock and Bonds Act, presents four distinct and independent methods of predetermining the probable earnings of the project at that time. These methods were—

#### PREDETERMINATION NO. 1.

It is well known that while the gross earnings per car mile fluctuate greatly and give no criteria for comparison, the operating expenses per car mile of interurban electric systems throughout the United States are remarkably uniform and do not vary greatly from about 13 cents per car mile.

The probable number of car miles that will be operated per annum, aggregate 1,153,000.

If we apply this figure of 13 cents per car mile as the cost of operation to 1,153,000 car miles, allowing 55% for the operating percentage, we obtain as the gross annual revenue from passengers,

**\$272,536.00**

To this figure there may be safely added a sum equivalent to about \$500.00 per mile over a distance of 50 miles as representing gross revenue derived from freight, express, baggage, and mail service, or

**25,000.00**

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**Total from all sources.....\$297,536.00**

## PREDETERMINATION No. 2.

Reference to the population table given on page 30 will show the population served per mile of road-bed both including and excluding terminals.

In view of the fact that a considerable proportion of this population is represented by terminal cities, it has been deemed fair to assume as a basis for determining the revenues per capita to grant each important terminal city a certain percentage of population as being directly tributary to the line.

It will be noted that this percentage has been taken very conservatively and has resulted in an equivalent population per mile of road-bed of 851 which figure does not include the intermediate farming population.

A careful comparison of the characteristics of this line made with lines similarly located, with regard to population, terminals, and with due allowance for character of country traversed, indicates clearly that a gross annual income of \$6.50 per inhabitant served, *including only a small percentage of the total terminal population* may confidently be expected.

This will aggregate less than \$1.50 per capita for the entire population served.

This would give a gross annual revenue from passengers of .....	\$315,324.00
Allowance for freight, as per page 32* .....	25,000.00

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Total from all sources.....	\$340,324.00
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## PREDETERMINATION No. 3.

This predetermination is based entirely on the following count made between November 30th and December 15th, 1903, of the passengers carried by Burlington and Rock Island Systems, between Lincoln and Omaha, which it will be noted aggregate nearly 1,000 trips per day East and West and which figures do not include any passengers except those buying tickets at Omaha for Lincoln or vice versa.

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\*See page 635 of this Leaflet.

<i>No. Train—Burlington</i>	<i>Times taken</i>	<i>Average per day</i>
2 Eastward	6	100-1/3
4 Eastward	7	62.5
6 Eastward	1	20
12 Eastward	8	120.75
92 Eastward	5	102.4
5 Westward	6	129.8
7 Westward	7	110.4
3 Westward	7	118.6
13 Westward	3	96
<b>Total</b>		<b>861</b>

<i>No. Train—Rock Island</i>	<i>Times taken</i>	<i>Average per day</i>
42 Eastward		
6 Eastward	4	12.75
8	8	22.75
41 Westward	7	18.6
7 Westward	7	26.8
5 Westward	8	25.6
<b>Total</b>		<b>103</b>
<b>Add for above</b>		<b>861</b>

**Grand total per day 964**

Assuming that 75% or its equivalent traffic, viz., 750 trips at \$1.00 would accrue to the Omaha, Lincoln and Beatrice Railway, this would represent, per annum.....	<b>\$275,750.00</b>
Allowance for freight as per page 32*.....	<b>25,000.00</b>
<b>Total from all sources.....</b>	<b>\$298,750.00</b>

#### PREDETERMINATION NO. 4.

As stated in the preceding, Mr. E. C. Hurd, the secretary and manager of this system, who has carefully studied the local situation, has from personal observation, and much travel back and forth between Omaha and Lincoln, reached the conclusion independently of the writer's determinations

\*See page 635 of this Leaflet.

that the gross revenue from passengers would aggregate \$800.00 per day.

Mr. Hurd is, however, of the opinion, that the gross earnings from freight will be twice that estimated by the writer, viz. \$1,000 per mile per annum, giving, therefore; gross revenue from passengers, per annum.....\$292,000.00  
Gross revenue from freight, etc. per annum.. 50,000.00

Total from all sources,	<u>\$342,000.00</u>
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#### RECAPITULATION.

	Gross earnings per annum	Per mile of Roadbed
Predetermination No. 1.....	\$297,536.00	\$5,220.00
Predetermination No. 2.....	340,324.00	6,045.00
Predetermination No. 3.....	298,750.00	5,250.00
Predetermination No. 4.....	342,000.00	6,000.00

Careful consideration of these results would indicate that a very conservative estimate of the gross annual revenues from all sources would be \$300,000.00, or about \$5,300.00 per mile of road-bed per annum.

This figure is utilized on the following page as a basis for a statement covering earnings.

#### PROBABLE NET EARNINGS.

Gross revenue per annum from all sources (see preceding page) .....	\$300,000.00
Less 55% for operation.....	165,000.00
Net earnings .....	<u>\$135,000.00</u>

Mr. Hurd, the Commission's engineer, advises us that by reason of the increase in population since 1907, and the higher class of line and improved service now contemplated as against the line and service considered by the Falkenau Construction Company in 1907, an increase of fifteen per cent. (15%) in the gross earnings of the proposed line could reasonably be anticipated.

Whether these predeterminations of the earnings of the pro-

posed line will be realized, time and actual operation alone will demonstrate. The Commission withholds the expression of any opinion with reference thereto, except that they are entitled to the same weight and consideration as that accorded similar studies or estimates made by engineers of equal experience and like standing in their profession.

The Commission therefore finds that the issuance by the applicant of its thirty year gold bonds, bearing five per cent. (5%) interest, payable semi-annually, in the principal sum of two million, two hundred fifty thousand dollars (\$2,250,000), and of its capital stock in the sum of eight hundred, fifty thousand dollars (\$850,000.00), subject to the limitations and conditions hereinafter set forth in its order, are reasonably required by the applicant for the purposes set forth in the statute.

### ORDER.

*It is Therefore Ordered:* FIRST—That the Omaha, Lincoln & Beatrice Railway Company be, and the same is, hereby authorized, subject to the conditions hereinafter set forth, to issue its bonds dated March 1st, 1913, maturing March 1st, 1943, and bearing interest at the rate of five per cent. (5%) per annum, payable semi-annually, in the amount of two and one quarter million (\$2,250,000.00) dollars, said bonds to be the coupon bonds of the denominations of one thousand (\$1,000.00) dollars, five hundred (\$500.00) dollars, and two hundred and fifty (\$250.00) dollars each, and trust deed securing said bonds, be in the usual form and running to the Equitable Trust Company of New York, or to such other Trust Company of equal responsibility as may be substituted therefore; and also to issue its capital stock in the amount of eight hundred and fifty thousand (\$850,000.00) dollars.

SECOND—That the Omaha, Lincoln & Beatrice Railway Company shall keep true and accurate accounts showing the receipt and expenditure, in detail, by it of the proceeds of the sale or disposal of said bonds, and stock. Said accounts and vouchers shall be open to audit by the Commission, or its duly authorized agent.

**THIRD**—If said railway company constructs and equips its line through the medium of the Northern Construction Company, or any other construction company equally responsible, said construction company shall maintain an office within the state of Nebraska, where it shall keep true and accurate accounts, in detail, of all items of expense or cost, properly chargeable to said construction, which said accounts shall at all times be open to the examination and audit of the Commissioner or its duly authorized agent.

**FOURTH**—Said bonds or stock shall not be issued by said railway company, nor turned over to such construction company in payment for the acquiring, construction, and equipping of said line of railway except in such amounts as the Commission shall by special order, authorize upon the presentation of a certificate signed by the President or Engineer of the said railway company, and by the Commission's Engineer, showing the amount of money expended in the construction of permanent improvements, or in additions to the property, including equipment.

**FIFTH**—Said construction company shall not sell any portion of said bonds or stock so acquired to the public in general, until the line of road herein contemplated shall have been completed.

Nothing herein contained shall in any way abridge the right of such construction company to pledge said bonds and stock, as herein provided for, as collateral security for the purpose of securing moneys for the construction, acquisition and equipping said line, and the rights of third parties accepting said bonds and stock as collateral shall be as though said bonds and stocks had been authorized by this Commission without limitation.

**SIXTH**—That the proceeds from the sale of said bonds and stock are to be used for the purposes aforesaid, and not otherwise.

**SEVENTH**—That the said Omaha, Lincoln & Beatrice Railway Company shall make verified report to this Commission at the termination of every period of three months from the date of this order of the disposition and use made of the proceeds of such bonds and stock herein authorized, setting

forth in reasonable detail the purposes to which said proceeds have been devoted, and such reports shall be made until the proceeds of said bonds and stock have been expended, pursuant to the provisions of this order.

Made and entered at Lincoln, Nebraska, this 25th day of February, 1913.



## NEW JERSEY.

### Board of Public Utility Commissioners.

#### IN THE MATTER OF THE RECOMMENDATION OF THIS BOARD TO THE ACQUACKANONK WATER COMPANY TO ESTABLISH A MINIMUM RATE IN ACQUACKANONK TOWNSHIP FOR THE SUPPLY OF WATER BY METER.

*Decided November 19, 1912.*

#### Minimum Meter Rate—Apportionment to Localities—Comparison with Rates in Other Localities.

The Commission having recommended that the Acquackanonk Water Company quote a rate for metered service in the township, the company proposed a minimum meter rate of four dollars per quarter. Upon investigation it appeared that the company had formerly furnished metered service at a minimum rate of three dollars per quarter and that certain consumers continued to receive this service, although it was no longer offered to new customers. Consequently the proposed rate of four dollars involved an increase of rates which it was necessary for the company to justify. The Commission held that to this end the company must show that, if the three dollar rate were extended to all consumers desiring metered service, the company would fail to receive a fair return upon the fair value of its property. The company had not sustained this burden of proof.

The company alleged that, although its operating expenses per mile of pipe were about the same in Passaic and Acquackanonk, its receipts per mile of pipe in the latter were only about one-third of the corresponding receipts in the former. The Commission held that this allegation was inconclusive because much of the main in Acquackanonk was devoted primarily to supplying Passaic, and there was no persuasive evidence to show how much might fairly be considered as installed specifically to supply Acquackanonk.

With respect to a comparison of rates with those in other localities the Commission held that water rates are particularly subject to the actual conditions of supply which vary so widely that except for contiguous territory comparisons are of little value.

It was held that the fact that the company had long charged the same flat rates in Passaic and Acquackanonk, and proposed their continuance, indicated that the meter rates in the two municipalities should also be identical. Passaic and the closely built sections of Acquackanonk Township are essentially homogeneous and are growing into a compact and thickly settled whole, so that it would be discriminatory and involve an unreasonable classification in making rates not to charge the same meter rates in both places.\*

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\*Editor's headnote.

*William B. Gourley*, for the Township of Acquackanonk.  
*Michael Dunn*, for the Acquackanonk Water Company.

### REPORT.

On January 12th, 1912, this Board, after hearing in re F. B. Tynan, et. al., vs. Acquackanonk Water Company, decided that the allegations of exorbitant charges and of undue or unjust discrimination were not proved. The flat rates charged the complainants were identical with the flat rates prevalent in the adjacent city of Passaic. The discrimination alleged was based on furnishing metered service to certain consumers and denying metered service to other consumers in said township. The company's explanation of the discontinuance of metered service to new consumers in the township was that when the residential development of the township first appeared certain, the extension of service was made less costly by the non-installation of meters. Private consumers having been given metered service at the outset at the same rates as in Paterson and Passaic were left, however, in the enjoyment of metered service. Accordingly the township was piped at a minimum cost, and thereafter metered service to new applicants was uniformly denied. When meters were set, the purpose was to check consumption under special conditions, and the private consumer was charged uniform flat rates. The Board pointed out, however, that the policy of the Company, while justifiable as to the past, denied the consumer in the township the option of flat rates or metered rates; and recommended that the company quote a rate to the consumers in the township for metered service.

In response to this recommendation the company proposes a minimum rate for metered service at sixteen dollars per annum or four dollars per quarter. A hearing upon this proposal was held on September 27th, 1912, at the Court House, in the City of Newark. Testimony was taken, and briefs were submitted by counsel. As approximately two hundred consumers in the township are now furnished water at a minimum rate for metered service at twelve dollars per annum,

or three dollars per quarter, the new rate proposed by the company is an increase. By statute the burden of proof to justify said increase is, therefore, upon the company. We do not find that the company has met or sustained the burden of proof cast upon them under the statute. To do so, it would, in our judgment, be necessary for the company to show by evidence that the present rate for metered service in the township if extended to all consumers in the township desiring metered service, would fail to give the company a just, fair or compensatory return on a fair valuation of the property used and useful in affording service in said township. This the company has not done. The proposed increase is, therefore, disallowed. The company's allegation that in the said township the receipts per mile of pipe are about one third of what the corresponding receipts are in Passaic, while the operating expenses per mile of pipe are about the same in both localities, is inconclusive. It is inconclusive because much of the main laid in the township was primarily for the supply of Passaic, and because no persuasive evidence exists to show how much of the plant in the township may fairly be considered as installed for the specific supply of the township's consumers.

It is alleged by the company that Passaic has sewers, whereas the township has not; that in consequence, the anticipated consumption per service in the township would be less than in Passaic; and that an indential charge for metered service would yield less revenue than is yielded in the city. If the consumption per service is markedly less in the township, it seems anomalous that the same flat rates have been maintained by the company in Passaic as in the township. Moreover the outlying portions of Passaic are not served completely, and the parts of the township adjacent to Passaic are identical in character to the un-sewered suburbs of Passaic. The township is installing the trunk sewer moreover, and the disparity in use, if important, is bound to diminish when Clifton and other thickly settled parts of the township are sewered.

The extension of pipe lines to outlying and uninhabited portions of the township, it is believed, are paid for, in the

first instance in certain cases, by real estate improvement companies.

We are disposed to disregard the rates cited for various places in distance localities. Where rates are particularly subject to the actual conditions of supply, and these vary so widely that except for contiguous territory, comparisons are of little value.

The essential point in the case seems to be that Passaic and the closely-built sections of Acquackanonk Township are essentially homogenous, and are growing more closely together to a compact, thickly settled whole. The long continued identity of the flat rates in Passaic and Acquackanonk Township established and maintained by the company which proposes their continuance induces us to believe that the metered rates in the two municipalities should also be identical.

The Board of Public Utility Commissioners, therefore finds and determines:

(1) That the Board is not satisfied that the proposed new minimum rate for metered service, which involves an increased rate, is just and reasonable.

(2) That in the continued absence of identity of metered rates the Acquackanonk Water Company will make and give an unreasonable preference or advantage to one locality and subject another to prejudice and disadvantage.

(3) That in the continued absence of identity of metered rates the Acquackanonk Water Company will impose an unjust and unreasonable classification in the making or as the basis of rates for the service rendered by it.

An order bearing even date hereof will be entered.

Dated November 19th, 1912.

### ORDER.

This case having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had, and the Board having, on the date hereof made and filed a report, containing its findings of fact and conclusions thereon, which said report is hereby

referred to and made part hereof, the Board of Public Utility Commissioners,

*Hereby Orders* the Acquackanonk Water Company to establish and maintain a minimum rate for metered service, at each residence in Acquackanonk Township where such metered service is requested by a consumer, of twelve dollars per annum, or three dollars per quarter for each quarter or part thereof where such service is rendered for less than one year, the said amount to be charged quarterly against those afforded metered residence service by said company, and to be subject to the rules and regulations of said company now in force except insofar as said rules and regulations may conflict with this order.

This Order shall take effect January 1st, 1913.

Dated November 19th, 1912.

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CITY OF NEWARK vs. PUBLIC SERVICE ELECTRIC COMPANY

CITY OF NEWARK vs. PUBLIC SERVICE GAS COMPANY.

CITY OF NEWARK vs. PUBLIC SERVICE CORPORATION OF NEW JERSEY.

*Decided November 19, 1912.*

**Separate Installation for Same Customer—Method of Computing Discounts—Elements Constituting a Public Utility.**

Upon complaint by the City of Newark with respect to the method of computing discounts,

*Held*, That it would be a discrimination in favor of the City if the consumption of gas and electricity in all public buildings should be treated as if supplied through one installation, thus entitling the City to larger discounts, unless the same rule were applied in favor of all owners of two or more segregated pieces of property. No discrimination exists against the City under the present system of charging for each building as if owned by a separate customer.\*

*Charles M. Myers*, Assistant City Attorney, for the City of Newark.

*L. D. H. Gilmour*, for Public Service Electric Company, Public Service Gas Company, and Public Service Corporation of New Jersey.

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\*Editor's headnote.

## ORDER.

The City of Newark on June 11th, 1912, filed its petition against both of said corporations, and also included the Public Service Corporation of New Jersey.

The Public Service Corporation of New Jersey filed its answer June 19th, 1912, claiming that it is not a public utility corporation, that it is not engaged in the manufacture or distribution of electrical energy or gas and is not exercising any franchise or authority granted to it by the State or any municipality thereof. These allegations being admitted, it appears that the Public Service Corporation of New Jersey is not a proper party to this proceeding. The Public Service Electrical Company and Public Service Gas Company filed their respective answers July 13th, 1912, raising issues on the merits.

The cases were set down for hearing September 10th, 1912, but by request of counsel were adjourned until October 25th, 1912, when testimony was taken and counsel heard.

It appears from the testimony, and the admissions in the pleadings, that the Mayor and Common Council of the City of Newark is a municipal corporation of the State of New Jersey and as such has charge and control of most of the public buildings in said City of Newark, except such as are under the charge and control of the Board of Education of Newark; that such public buildings are furnished with gas by the Public Service Gas Company, and with electricity by the Public Service Electric Company (except the City Hall and Public Library, which are large consumers); that the use of said electrical energy and gas so furnished is charged for as if each public building were a separate customer; that said buildings are located in different parts of the City of Newark, some at great distances apart; that the Public Service Electric Company and Public Service Gas Company have established a rate of discounts, the discount increasing with the consumption, and that if consumption at the several public buildings at different points of distribution were combined the rate of discount would be larger than the several discounts now allowed at the several installations.

The contention that the consumption of gas and electricity in all public buildings in the City of Newark should be treated as if furnished at one separate installation, thus enabling the City to get the benefit of larger discounts, is, in the opinion of the Board, unreasonable, and if granted would be in fact a discrimination in its favor unless the same rule applied to all owners of more than one piece of segregated property.

The contention of the petitioner that it is discriminated against is not sustained.

The petitions in all these cases will, therefore, be dismissed.

Dated November 19th, 1912.

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#### RULES GOVERNING APPLICATIONS FOR APPROVAL OF MERGERS UNDER CHAPTER 19, OF THE LAWS OF 1913.

Every application to the Board of Public Utility Commissioners, under Chapter 19 of the Laws of 1913, for approval of a proposed merger of corporations must comply with the following requirements:

1. The application shall be by petition signed, on behalf of the corporations proposed to be merged, by the president and secretary thereof, respectively.

2. There shall be submitted with the petition, *but not attached thereto*, the original agreement of merger and the original certificates required by Section 105 of "An Act concerning corporations (Revision of 1896)," to establish that the provisions thereof have been complied with.

3. A copy of original agreement and certificates shall be attached to the petition.

4. The petition shall set forth specifically the nature of the business in which each of the corporations proposed to be merged is actually engaged; state the territory over which the business of each has actually extended; and set out the reasons for, and the objects sought to be accomplished by, the proposed merger.

5. No application will be approved without public hearing. A day and place for such hearing will be fixed by the secretary of the Board upon the filing of the petition, and notice thereof will be mailed by the secretary to the applicants.

6. If any stockholder has dissented from, or failed to assent to, the proposed merger it shall be the duty of the corporation whose stock he holds to give each such stockholder at least two days' notice by mail of the time, place and purpose of such public hearing, and file with the Board, at or before such public hearing, an affidavit establishing the mailing of such notice.

7. Applicants must be prepared at the hearing on their petition to furnish the Commission, if requested, with information relating to the scope of their business; statement of income and outgo; of assets and liabilities, of trade agreements and practices which in the judgment of the Board may be relevant to action on the petition.



## NEW YORK.

### Public Service Commission—Second District.

#### IN THE MATTER OF THE COMPLAINT OF TRUSTEES OF THE VILLAGE OF OSSINING AGAINST NORTHERN WESTCHESTER LIGHTING COMPANY.

No. 148.

*Decided January 9, 1913.*

#### Free Service to Municipality Under Franchise—Cost of Such Service to be Borne by Entire Business as Operating Expense—Reduction of Rates for Street Lighting. [Ed.]

1. A franchise condition requiring a company to furnish the municipality free of charge light to a stated amount per annum is to be regarded as a general addition to the company's operating expenses as relating to all of its business, and is not to be considered as a factor in determining the reasonableness of the company's charge for public lighting, except to the extent that it is a general addition to the operating expenses and has its proportionate bearing upon the cost of furnishing such public lighting.

2. Respondent required to reduce its charges for street lighting in the village of Ossining so that they shall not exceed \$19 per year per 25 candle-power incandescent lamp, and \$90 per year per arc lamp of the kind and power in use.\*

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#### IN THE MATTER OF THE COMPLAINT OF THE ATTICA WATER, GAS AND ELECTRIC COMPANY AGAINST ALDEN-BATAVIA NATURAL GAS COMPANY, ALLEGING UNJUST DISCRIMINATION.†

No. 152.

*Decided January 21, 1913.*

#### Discrimination Between Competing Utilities in Disposing of Surplus Supply—Collateral Attack Upon Legality of Competing Corporation—Jurisdiction of Commission—Continuance of Competition Between Existing Utilities. [Ed.]

\*Syllabus prepared by the Commission.

†On February 25, 1913, the Commission denied the respondent's petition for a rehearing.

By a preliminary order entered in this case on the 23rd day of January, 1912 (Opinion No. 121), it was held that the Commission had jurisdiction and power to order and direct the respondent to supply gas to the petitioner on the same terms upon which it is supplying gas to the Attica Natural Gas Company, and the case was by that order set down for a further hearing at which the respondent was given an opportunity to show any good reason why the Commission should not require it to supply natural gas on the terms and conditions above mentioned.

After hearings had herein

*Held*, upon the evidence submitted, that no good reason is shown why gas should not be served by respondent to the petitioner upon the terms mentioned, and it is so ordered.

Where a gas corporation has a plant actually in existence in a municipality, and has made contracts with such municipality for the furnishing of service and is admittedly a corporation doing business and serving customers in such municipality, its legality and right to do business in this State can not be questioned by another public service corporation in a proceeding of this character.

The facts and circumstances under which the order is made are fully stated.

*G. P. Stockwell*, 53 Main street, Attica, N. Y., for the complainant.

*Bayard J. Stedman*, 9 Masonic Temple, Batavia, N. Y., for the respondent.

## OPINION.

*OLMSTED, Commissioner:*

On the preliminary hearing in this case the respondent denied any power or authority on the part of the Commission to compel respondent to furnish the petitioner with gas. The Commission held that it had jurisdiction, and ordered the case to proceed to a hearing upon the facts in order that the respondent might, if it could, show any good reason why the Commission should not require it to supply gas to the petitioner upon the same terms and conditions that it supplies gas at the present time to the Attica Natural Gas Company.

Evidence on the part of both petitioner and respondent has been taken which shows—

*First:* That the petitioner, the Attica Water, Gas and Electric Company, is at the present time engaged in supplying natural gas to about forty customers in the village of Attica,

and that it produces from its own wells the gas which it is furnishing to its customers.

That it charges these consumers at the present time 50 cents per thousand feet.

That in the autumn of the year 1911 it had 202 gas customers but since that time it has lost all but the 40 named, the others for the most part having been taken over by the Attica Natural Gas Company.

That the Attica Water, Gas and Electric Company uses a considerable amount of natural gas as fuel to generate steam in producing electricity which it sells to its customers in the village of Attica.

That its wells at the present time produce gas in quantity sufficient to supply fuel for its engines used in generating electricity or sufficient in quantity to supply the 40 gas customers on its distributing pipes, but not enough for both purposes.

That the supply from its wells is diminishing with considerable rapidity and that there would not be enough gas at the present time to supply the demand for use in distribution to customers should it get back the full number of 202 customers which it had in the autumn of 1911.

That it formerly sold gas to its consumers at about \$1 per thousand feet, but that since December, 1911, its price has been 50 cents per thousand feet.

*Second:* That the Attica Natural Gas Company is a corporation engaged in the distribution of natural gas in the village of Attica.

That it formerly sold gas at about \$1 per thousand cubic feet, but since December, 1911, it has sold it at 50 cents per thousand feet.

\* That the Attica Natural Gas Company and the Attica Water, Gas and Electric Company are competitors for the business of supplying natural gas to the inhabitants of the village of Attica and have been such for several years.

That the Attica Natural Gas Company did on or about the 1st day of November, 1911, enter into a contract with the respondent, the Alden-Batavia Natural Gas Company, by the terms of which the Alden-Batavia Gas Company, the

respondent herein, covenants and agrees to sell and deliver to the Attica Natural Gas Company for and during the period of ten years from the 1st day of November, 1911, such portion of the surplus natural gas which may be produced from wells now drilled or that may hereafter be drilled upon lands owned or leased by the Alden-Batavia Natural Gas Company, as the Attica Natural Gas Company may need and require to supply its customers and carry on its business in the village of Attica, N. Y., and vicinity, for the sum or price of 30 cents per one thousand cubic feet, meter measurement, calculated on the basis of ten ounces to the square inch; to deliver said gas on the village line of Attica, N. Y., where the Attica Natural Gas Company agrees to receive it and pay therefor the sum of 30 cents per thousand cubic feet for gas in amounts which the Attica Natural Gas Company may need and require to supply its customers and carry on its business in the village of Attica and vicinity. The contract further shows that the gas sold and delivered under it shall be delivered at a pressure of not less than forty pounds to the square inch, and that the contract may be canceled and annulled by either party thereto on giving the opposite party three months' notice in writing of its intentions so to do.

That in pursuance of the terms of said agreement the respondent, the Alden-Batavia Natural Gas Company, is at the present time supplying natural gas to the Attica Natural Gas Company which it in turn is selling and distributing to its customers in the village of Attica.

The petitioner in this case asks that the respondent be ordered to make a similar contract with it: that is, that it shall be ordered to deliver to it, from respondent's surplus, gas at 30 cents per thousand feet under the conditions named in the contract hereinbefore set forth.

As its reasons for refusing to comply with this demand the respondent first recurs to the objections raised on the first hearing herein, and asserts that the petitioner has no standing before this Commission and cannot invoke its powers because it is a foreign corporation and did not prove on the hearing that it has a license from the Secretary of State of the State of New York to do business in this State.

We do not think these objections are of force. Respondent's counsel in his brief has cited a number of cases tending to show that actions at law may not in certain cases be maintained by foreign corporations which have not taken out the license referred to, and that the organization of the petitioner under the laws of West Virginia is for a combination of purposes not permitted by the laws of this State, and that therefore the company has no right to operate within this State.

These authorities would not seem to govern in a proceeding like the present one brought before this Commission. The petitioner is admittedly a corporation, and it is actually at the present time serving gas, water and electricity in the village of Attica. It has or has had contracts with the village both for gas and for electricity. It is a public service corporation and reports to this Commission as such. It has placed in evidence Chapter 35 of the Laws of 1880 (passed February 28, 1880), by the terms of which it was made "lawful for the Attica Water Company to purchase, hold, operate and maintain the gas works, pipes, fixtures, machinery and real estate used in connection therewith now in the village of Attica, Wyoming county, N. Y.; to extend and enlarge the same within the bounds of said village as shall be approved and determined upon by a majority of the trustees or directors of said water company." This act further provides that "upon the purchase being made according to the provisions of the act the corporate powers of the Attica Water Company shall be and they are hereby enlarged so as to embrace the objects and purposes of this act."

The Attica Water Company is the predecessor of the petitioner, and deeds of conveyance from it to the petitioner were placed in evidence showing transfer to the petitioner of all the property and franchises of the Attica Water Company. The petitioner has for a long time been engaged in the gas business in the village of Attica and occupying the streets of that village. If its right lawfully to be there is denied, the matter should be contested in some forum other than this Commission, which has no jurisdiction in this proceeding to determine the rights of the Attica Water, Gas and Electric Company in the premises.

Besides that, the petitioner herein alleges in its petition that it has a license to do business in the State of New York obtained from the Secretary of State, and although no copy of such license was put in evidence upon the hearing an examination of the files in the office of the Secretary of State shows that such license has as a matter of fact duly issued.

The respondent argues that the making of the contract between it and the Attica Natural Gas Company has resulted in reducing the price of gas to the public from \$1 per thousand to 50 cents per thousand, and that the action of the petitioner in asking for a similar contract will in some manner "exclude or impede competition."

We fail to see the force of this contention. The result of the obtaining by the petitioner of a contract similar to that of the Attica Natural Gas Company would be to enable it to compete with the last named company in selling gas, and the rate to the consumer might possibly go as low as 30 cents per thousand, the cost of the commodity to each competitor. Such a rate war would be undesirable but it would undoubtedly result in temporary advantage at least to the consumer. It is not to be encouraged, and would not be were this a case of an application on the part of a new company to enter the field. It must be remembered, however, that in this case the rival companies are now in existence and in competition, and that the favorable contract of one is likely to crush out the life of the other so far as gas service is concerned. The evils attendant upon a rate war are already present and acute so far as the petitioner is concerned. It has lost most of its gas business since this contract went into effect and seems likely to lose it all in the near future.

The final objection raised by the respondent is that it has no surplus gas with which to supply the petitioner and could not comply with petitioner's request without running the risk of a shortage to its present customers.

A sufficient answer to this objection might appear in the fact that the petitioner is asking merely for the same contract that the Attica Natural Gas Company now has, viz: an agreement, revokable at three months' notice by either party, to furnish the petitioner, *out of its surplus gas*, natural

gas at 30 cents per thousand, to be delivered at a pressure of forty pounds per square inch. If there be no surplus gas, the contract by its own terms becomes nugatory and the situation of the petitioner in that event is no better and no worse than that of its competitor, the Attica Natural Gas Company. In any event, if the respondent should hereafter deem the contract prejudicial to its interests either in respect to its customers or otherwise, it could on three months' notice cancel both contracts, although it must be admitted that the reason to be given for such cancellation would probably have to be such as to satisfy this Commission of their cogency.

Aside from this view of the case, however, it must be borne in mind that the present application is not for an amount of gas necessary to supply an *additional* territory. The respondent has already contracted (subject to the conditions above set forth) to supply to the Attica Natural Gas Company such gas as the latter company "may need and require to supply its customers and carry on its business in the village of Attica and vicinity." This means that respondent has already agreed, under the limitations named, to furnish every person or corporation in Attica and vicinity who may apply for natural gas with sufficient gas to meet his requirements. It is apparent that whatever consumers the petitioner may hereafter obtain will be taken from actual or potential consumers of the Attica Natural Gas Company and vice versa, and the same proposition is true of any future consumers obtained by the Attica Natural Gas Company. In either event the *total number* of consumers is the same. It is merely a question of which distributing company takes them on. We cannot see how the total draft upon the respondent's supply of surplus gas can be in anywise affected by granting the petitioner's demands. The respondent must always have ready at forty pounds pressure enough for everybody in the village of Attica and vicinity and it can make no difference to it who distributes it.

The petitioner has stated that it does not intend to serve gas elsewhere than in this particular territory, and it is not shown or understood that it desires gas for distribution in any other locality. It may be said that the obtaining by

the petitioner of a contract similar to that of the Attica Natural Gas Company, by which it may obtain gas at 30 cents per thousand feet, will put the petitioner in a position to inaugurate a rate war, and that the usual consequence, disastrous to the competitors and to the public, will ensue. This, as has been stated, might be a good reason for refusing to a new company permission to go into the Attica territory, but with both companies now there and in active rivalry it is not to be presumed that the competition will be more keen in the future than it has been in the past when the sources of supply from local wells owned by each have been, so far as can be judged from the evidence, practically similar. To urge this objection at this stage in the proceedings is to urge it solely against the petitioner, who must go out of business and lose its investment in its gas distributing system if it cannot obtain gas on an equal footing with its competitor.

The respondent produced considerable evidence to show that it could not with safety and in justice to its present customers take on any more consumers.

Disregarding for the moment the point to which attention has been above called, namely, that no additional draft is actually to be made, we shall consider the force of this evidence in supporting the contention of the respondent.

It was shown that during the months of January and February, 1912, owing to the low temperatures prevailing for a considerable time during those months, it became necessary for respondent to notify some of its largest consumers that they must discontinue the use of gas temporarily, and this was followed by a shut-off at the Johnston Harvester Works at Batavia and the Glass Factory at Alden for a period lasting several days, the exact term of which is not stated. Respondent's manager testified that with these exceptions the company had enough gas to run its low pressure system all last winter. It is a matter of common knowledge that the weather conditions in Western New York during the months named, so far as they concerned continuous low temperatures, were exceptional. A chart of the pressure of respondent's whole system for February 10, 1912, was put in evidence, and shows that on that day the pressure went down to ten pounds



although all the wells of the company were drawn upon to keep it up. The respondent was asked to produce similar charts showing the pressure on days other than February 10th. It has so done, and the Commission has before it the pressure record of each day from January 1, 1912, to March 20, 1912. An examination of these charts shows that the minimum pressure fell below sixty pounds on five days only during this period, namely:

	<i>Minimum</i>	<i>Maximum</i>
February 9.....	34 lbs.	93 lbs.
February 10.....	10 lbs.	Not stated
March 2.....	45 lbs.	117 lbs.
March 6.....	56 lbs.	130 lbs.
March 11.....	57 lbs.	127 lbs.

It further appears from an examination of the chart that a pressure of sixty pounds and over has always existed for 93 per cent. of the time between January 1 and March 20, 1912. On two days only, viz., March 9th and 10th, has the pressure gone below forty pounds, which is the pressure named in the contract at which gas is to be delivered to the Attica Natural Gas Company; and during 93 per cent. of the severest portion of the year the minimum pressure has been twenty pounds above the stipulated figure. Respondent's manager testified that "our pressure that we are holding to run our plant through would average about forty pounds; we try to avoid going below that point." It is evident that he considered the pressure adequate so long as it kept above forty pounds. It also appeared that the dropping of the pressure below that figure occasionally was not considered serious, for the evidence shows that notwithstanding the fact that the pressure several times went below forty pounds during the winter of 1910-11, as stated by respondent's manager, the respondent in the summer and fall of 1911 took on the entire Attica and Alexander territory, the Putnam settlement, and Wyoming village. If it is to be argued that the dropping of the pressure gauge below forty pounds is a danger signal which is controlling and should block the further extension of territory, it may be answered that the respondent itself has in the past years totally disregarded

this and has taken on the largest additional field in three years in the face of this warning.

The respondent has at the present time 78 wells that can be used, and on March 22, 1912 (the date of the last hearing), from 15 to 20 of them were not in use, so that approximately 60 of the wells were furnishing all the gas necessary to supply all customers at that time.

The Commission has had its chief inspector of gas go over the testimony in this case, examine the charts submitted as well as the annual reports of the petitioner, respondent, and the Attica Natural Gas Company. He has made a brief report to the Commission detailing many of the facts hereinbefore given and concludes, as follows:

The evidence discloses the fact that the Attica Water, Gas and Electric Company had 202 gas customers last fall, and at the time of the hearing all but 40 had been taken away by the Attica Natural Gas Company, and that apparently the latter company was also trying to get these 40. There is not enough data upon which to base computation. However, after reading the evidence and looking at the charts, as a matter of judgment my opinion is that there is no question whatever that the Alden-Batavia Natural Gas Company has enough surplus gas to supply the Attica Water, Gas and Electric Company adequately.

It is the opinion of the Commission that the respondent, the Alden-Batavia Natural Gas Company, should be ordered and directed to enter into a contract with the petitioner, the Attica Water, Gas and Electric Company, for the furnishing of gas substantially upon the same terms and conditions as those contained in respondent's contract with the Attica Natural Gas Company, and to give a connection at the village line to petitioner on or before the 21st day of February, 1913, and to furnish the petitioner on or before that date with gas at such point of connection at 30 cents per thousand feet, on the same terms and conditions as are set forth in the contract between respondent and the Attica Natural Gas Company, which contract was placed in evidence on March 22, 1912, and marked Respondent's Ex. No. 2, with the following exception, to wit:

It appears from the testimony that the petitioner at the present time makes use of gas from its own wells as fuel to generate electricity. Whatever gas is hereafter used for

this purpose by the petitioner must be obtained from its own wells or purchased from the Attica Natural Gas Company at its regular rates. In taking gas used for these purposes the petitioner is a regular consumer and entitled to no consideration other than would be given to any other consumer located in the village of Attica in the same class with itself. Whatever gas is furnished the petitioner by respondent under the order of this Commission must be used for distribution purposes only, and should be separately metered and accounted for through mechanical devices which can be easily and readily installed.

There was some testimony taken and statements made tending to show that petitioner's financial condition was such that security for the performance of the contract should be given by it. If the respondent deems such security necessary, the contract hereinbefore referred to should be guaranteed by adequate and proper security.

An order should be entered accordingly.

#### ORDER.

WHEREAS, This Commission by an order dated January 23, 1912, directed that the Alden-Batavia Natural Gas Company, the respondent herein, should as a matter of law and right supply to the Attica Water, Gas and Electric Company, the petitioner herein, gas on the same terms upon which it is supplying gas to the Attica Natural Gas Company; and

WHEREAS, By the same order the Commission directed that this case should proceed to a further hearing at which the respondent might under its answer show any good reason why the Commission should not require it to supply natural gas to the petitioner herein on the same terms and conditions upon which it is supplying the Attica Natural Gas Company; and

WHEREAS, Hearings thereupon have been held, and whereas it appears from the evidence submitted on such hearings from the report of the inspector of the Commission made and filed herein that no good reason exists why the respondent should not supply to the petitioner gas for distribution only,

upon substantially the same terms and conditions as are expressed in a certain contract filed in evidence herein between the Alden-Batavia Natural Gas Company, and the Attica Natural Gas Company, dated November 1, 1911; now, therefore, it is

*Ordered* (1) That the Alden-Batavia Natural Gas Company, the respondent herein, be and it is hereby directed to supply to the Attica Water, Gas and Electric Company, the petitioner herein, gas from its mains on terms and conditions substantially the same as those contained in a contract made and entered into by it with the Attica Natural Gas Company, dated November 1, 1911, and filed in this proceeding as Respondent's Exhibit No. 2, except that said contract may contain a reasonable provision for security as to payment if the respondent shall elect to make one.

*Ordered* (2) That such gas as is furnished by the Alden-Batavia Natural Gas Company, the respondent, to the Attica Water, Gas and Electric Company, the petitioner, shall be for distribution only; that any gas which may be desired by the petitioner for use in its plant or for the purpose of generating heat in its boilers, or for any other purpose except that of distribution and sale, shall not be furnished to it by the respondent under this order, but may be purchased by it from the Attica Natural Gas Company at the terms and price offered by the schedule of the Attica Natural Gas Company to other consumers in the village of Attica.

*Ordered* (3) That in making the connection from the mains of the respondent there shall be no connection installed which shall enable gas to pass from the mains of the respondent to the generating system of the petitioner, but this shall not prevent the installation by the petitioner of a device which shall allow gas to pass from its own producing system into its distribution mains, provided that such device shall receive the approval of this Commission, it being the intention of this order that gas purchased by the petitioner under the contract hereinbefore provided for and sold by the respondent shall be used for public distribution only by the petitioner in the village of Attica and not in any manner for private use by it.

*Ordered* (4) That said service shall be given by the respondent to the petitioner on or before the 21st day of February, 1913.

*Ordered* (5) That on or before the 1st day of February, 1913, the respondent shall notify this Commission whether this order is accepted and will be obeyed.

American Telephone and Telegraph Company  
Bureau of Commission Research  
Legal Department  
15 Dey Street, New York City

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**COMMISSION LEAFLET No. 17**

May 1, 1913.

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Recent Commission Orders, Rulings and Decisions  
from the following States:

California	New Jersey
Connecticut	New York
Georgia	North Dakota
Kansas	Ohio
Louisiana	Oklahoma
Maryland	South Dakota
Nebraska	Tennessee
New Hampshire	Wisconsin

and from the  
Interstate Commerce Commission  
and  
Canada

Copyright, May, 1913,  
BY AMERICAN TELEPHONE AND TELEGRAPH COMPANY.

## PART I.

### COMMISSION ORDERS, RULINGS AND DECISIONS DIRECTLY AFFECTING TELEPHONE AND TELE- GRAPH COMPANIES.

#### CALIFORNIA.

##### Railroad Commission.

IN THE MATTER OF THE APPLICATION OF POMONA VALLEY  
TELEPHONE AND TELEGRAPH UNION FOR AN ORDER AU-  
THORIZING THE ISSUE OF BONDS OF THE FACE VALUE OF  
ONE HUNDRED THOUSAND DOLLARS.

Application No. 400—Decision No. 494.

*Decided March 11, 1913.*

Authorization of Bond Issue—Excellent Financial Condition  
of Applicant—Reduction of Interest upon  
Indebtedness. [Ed.]

Applicant given permission to execute a trust deed securing an issue of \$200,000 six per cent. twenty-five year bonds, and to issue presently \$100,000 of said bonds, to be used for extensions and betterments and the discharge of obligations. The bonds are to be issued at par. Applicant's favorable financial condition commented upon.

*Nichols & Pitzer*, for applicant.

#### REPORT.

THELEN, *Commissioner*:

This is an application for authority to issue bonds of the face value of \$100,000 for the purposes hereinafter specified.

The applicant corporation was incorporated in September, 1902, and is one of the so-called independent telephone companies. It started its business within the city of Pomona, and thereafter extended its service to the adjoining cities or towns of Chino, Claremont, Lordsburg, and San Dimas, in



competition with the Pacific States Telephone and Telegraph Company. After several years of competition, the latter company retired from the field, so that the applicant herein is left in the exclusive possession of the local field in the territory served by it. The applicant has long distance connections with The Pacific Telephone and Telegraph Company and the United States Long Distance Telephone and Telegraph Company.

Applicant's authorized capital stock consists of \$100,000, divided into 20,000 shares of the par value of \$5.00 each. All this stock has been issued for cash at par or a little more than par. On February 1, 1904, applicant issued bonds of the face value of \$20,000, bearing interest at the rate of 6 per cent. per annum. Of the bonds so issued, bonds of the face value of \$10,000 have been redeemed, leaving \$10,000 now outstanding. Applicant also has outstanding coupon notes of the face value of \$40,500, other bills payable amounting to \$18,500, and open account bills amounting to \$6,837.

The original cost of applicant's plant, apart from real estate, fixtures and tools was \$251,123.30. Applicant has from time to time charged off various items for depreciation, and considers this property to be worth at the present time \$155,982.30. In addition thereto, applicant owns real estate in the cities of Pomona, Chino and Lordsburg, valued at \$15,000, fixtures which cost \$4,600, and tools estimated at \$200. Applicant estimates the present value of its entire property as \$179,782.30 or thereabouts. No amounts have been charged to capital account for superintendence and engineering on construction work.

In the year 1912, applicant met all its obligations, including interest, paid a dividend of \$2,249.57, earned \$3,000 for another dividend, and increased its account, called profit and loss, on account of depreciation of plant more than \$14,000.

Applicant now asks authority to issue 6 per cent. bonds of the face value of \$100,000, and to execute a trust deed or mortgage on its property to secure the same, for the following purposes:

To retire outstanding bonds of the issue of 1904.....	\$10,000 00
To retire coupon notes.....	40,500 00
To meet other bills payable.....	18,500 00
To pay open accounts.....	6,837 00
To purchase a lot in San Dimas and to erect thereon a building and equipment.....	4,000 00
To extend and improve its system.....	20,163 00
Total .....	<u>\$100,000 00</u>

The coupon notes are for five hundred (\$500) dollars each, and will become due from time to time up to about the middle of the year 1916. Applicant expects to be able to exchange bonds of the new issue for many of these notes, and to use the proceeds from the sale of other bonds of the proposed issue to retire the other notes as they become due. Applicant expects to sell all its bonds at par. This is a condition very pleasing to the Commission and is made possible by the fact that there is no water at all in the capital, and that the affairs of the company have been conducted with prudence and ability. Applicant has hitherto sold all its stock and bonds for cash at par, a very refreshing condition which I hope will become more prevalent as the public secures more confidence in the securities of public utilities in this State, and as this Commission gradually approaches the realization of its aims in the matter of public utilities securities. As the coupon notes bear 7 per cent. interest and the bonds will bear 6 per cent., it is evident that applicant will improve its financial condition by issuing the bonds for which application is now made to this Commission. The other bills payable which it is proposed to refund likewise bear interest at the rate of 7 per cent. The open account items are for material which went into capital account. The item of \$20,163 is to provide funds to extend and improve applicant's system during the next year or thereabouts. Applicant has a normal increase of five hundred telephones per year and a capitalization of forty (\$40) dollars or thereabouts per telephone, as unusually low amount. Applicant accordingly expects to utilize about \$20,000 for new construction and improvements during the next year or so. I find this amount to be reasonable. I find that none of the purposes for which

applicant desires to issue bonds are properly chargeable to operating expenses or to income.

I desire to say in conclusion that it has been a pleasant and refreshing task to investigate the applicant's affairs in connection with this application. Applicant furnishes a striking example of what a public utility can accomplish in this State, under good management, without a single dollar of bonus stock or discount on bonds or inflated capital.

I recommend that the application be granted, and submit herewith the following form of order:

### ORDER.

Pomona Valley Telephone and Telegraph Union having applied to the Railroad Commission of the State of California for an order of the Commission authorizing the issuance by said company of bonds to the amount of one hundred thousand (\$100,000) dollars, face value, said bonds to be payable on the first day of March, 1938, and to bear interest at the rate of six (6) per cent. per annum, payable semi-annually, and secured by a mortgage or deed of trust upon all the property of the company, and also for an order authorizing the execution and issue by said company of said mortgage or deed of trust, and a hearing having been held upon said application, and the Commission finding that the money to be procured by the issue of said bonds is necessary to and reasonably required by said company for the acquisition of property, the construction, completion, extension and improvement of facilities and the discharge and lawful refunding of obligations, and that the purposes for which said money is to be expended are not in whole or in part reasonably chargeable to operating expenses or to income.

*It is hereby ordered as follows:*

1. Pomona Valley Telephone and Telegraph Union is hereby authorized to execute and deliver mortgage or trust deed to Title Insurance and Trust Company, to be dated as of the first day of March, 1913, and to secure a possible issue of two hundred thousand (\$200,000) dollars of bonds, said bonds to bear interest at the rate of six (6) per cent. per annum, payable semi-annually, upon the terms and con-

ditions in said mortgage or deed of trust set forth and contained, said mortgage or deed of trust to be substantially in the form of Exhibit "C", attached to the petition in this proceeding. Upon the execution thereof, applicant shall file with this Commission a certified copy of said mortgage or deed of trust as executed. Said company, however, shall have no right or authority to issue any bonds pursuant to the terms of said indenture except as hereafter authorized by the Railroad Commission.

2. Pomona Valley Telephone and Telegraph Union is hereby authorized to issue one hundred thousand (\$100,000) dollars, face value, of principal of bonds of said company, maturing the first day of March, 1938, bearing interest at the rate of six (6) per cent. per annum, payable semi-annually on the first day of September and the first day of March of each year until the final payment of said bonds, under and in pursuance of the terms of the mortgage or trust deed heretofore in section 1 of this order authorized to be issued, on the following conditions and not otherwise, to wit:

(a) Pomona Valley Telephone and Telegraph Union shall sell said bonds so as to net said company not less than par;

(b) The proceeds from the issue of said bonds shall be applied only to the following purposes, that is to say: .

1. To retire the outstanding bonds of the issue of 1904, bonds of the face value of.....\$10,000 00
2. To retire the outstanding coupon notes, bonds of the face value of..... 40,500 00
3. To meet the company's other outstanding bills payable as specified in the application on file with this Commission, bonds of the face value of..... 18,500 00
4. To pay the company's open accounts, as specified in its application on file with this Commission, bonds of the face value of..... 6,837 00
5. To purchase real property in San Dimas and to erect thereon a suitable building for telephone use and to install therein a switchboard and other necessary equipment and extensions, bonds of the face value of..... 4,000 00
6. To construct, extend and improve its facilities, bonds of the face value of..... 20,163 00

3. Pomona Valley Telephone and Telegraph Union shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale

of the bonds hereby authorized to be issued, and on or before the twenty-fifth day of each month the company shall make verified reports to the Commission stating the sale or sales of said bonds during the preceding month, the terms and conditions of sale, the moneys realized therefrom and the use and application of such moneys, all in accordance with this Commission's General Order No. 24,\* which order in so far as applicable is made a part of this order.

4. The authority hereby given to issue bonds shall apply only to bonds issued by said company on or before the twenty-eighth day of February, 1914. If any of the bonds hereby authorized to be issued for the purpose of discharging outstanding obligations have not been utilized for that purpose on February 28, 1914, applicant may apply to this Commission for an extension of the time limit herein specified.

The foregoing opinion and order are hereby approved, and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 11th day of March, 1913.

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IN THE MATTER OF THE APPLICATION OF E. W. CROSBY TO  
SELL, AND OF THE REEDLEY TELEPHONE COMPANY TO  
PURCHASE, THE REEDLEY TELEPHONE EXCHANGE PLANT,  
AND TO ISSUE STOCKS IN PAYMENT THEREFOR.

Application No. 369—Decision No. 496.

*Decided March 11, 1913.*

**Purchase of Telephone Property—Authorization of Stock Issue  
for Organization Expenses, Acquisition of Property,  
and Betterments. [Ed.]**

Reedley Telephone Company desires to purchase the Reedley Telephone Exchange from E. W. Crosby and to pay therefor the sum of \$10,000, which sum is to be derived from the sale of \$11,000 capital stock at par, the extra \$1,000 to cover the expense of organizing said Reedley Telephone Company and disposing of said shares of stock, any sum remaining over and above the expense necessary to dispose of the stock to be used for improvements.

*Held:* That the needs of the public will be subserved by the granting of this application.

*E. W. Crosby*, for applicant.

*A. Terkel*, for applicant.

## REPORT.

GORDON, *Commissioner*:

This application is for permission on the part of E. W. Crosby of Reedley, California, for authority to sell the plant and property heretofore conducted by him under the name of Reedley Telephone Company to the Reedley Telephone Company, a corporation formed for the express purpose of taking over the plant and property involved and conducting the telephone business heretofore conducted by E. W. Crosby. Permission is also sought for the sale of 11,000 shares of capital stock of Reedley Telephone Company at \$1.00 per share.

E. W. Crosby is the present owner of the Reedley telephone exchange plant, and is a so-called sublicensee of The Pacific Telephone and Telegraph Company for the town of Reedley, and a radius of five miles from the center thereof. E. W. Crosby desires to sell, transfer, and assign all his right, title and interest in the said exchange, and such rights as he may hold as a so-called sublicensee in the territory involved, to the Reedley Telephone Company, a corporation duly organized under the laws of the State of California.

Reedley Telephone Company desires to purchase the Reedley telephone exchange from E. W. Crosby and to pay therefor the sum of \$10,000, which amount is to be derived from the sale of 11,000 shares of stock of the par value of \$1.00 per share, said stock to be sold at par, the extra \$1,000 to cover expense of organizing the said Reedley Telephone Company and disposing of said shares of stock, any sum remaining over and above the expense necessary to dispose of this stock to be used in providing such improvements and plant as may be found necessary at the time the Reedley Telephone Company is permitted to take possession, in so far as such amount so remaining may cover.

E. W. Crosby purchased the Reedley telephone exchange from The Pacific Telephone and Telegraph Company under

date of August 1, 1911, at an agreed price of \$4,870, of which amount he had paid in cash to date of application \$2,600, leaving a balance due of \$2,270 which is covered by mortgage held by The Pacific Telephone and Telegraph Company. Since acquiring the plant, E. W. Crosby alleges that he has spent in additions and extensions the sum of \$5,390, \$2,000 of which amount was expended in constructing a thirty-mile toll lead and line to Dunlap and Squaw Valley, the balance being expended in the Reedley exchange property. In addition to the amount due to The Pacific Telephone and Telegraph Company, there are the following amounts owing by E. W. Crosby, all of which liabilities the Reedley Telephone Company desires permission to assume and pay from the proceeds of the sale of stock which it desires permission to issue: \$600 to the Kellogg Switchboard & Supply Co., San Francisco; \$65 to the Western Electric Company, San Francisco; \$125 to Western Lumber Company, Reedley; \$600 to the Reedley National Bank of Reedley; \$500 to the First National Bank of Reedley. E. W. Crosby is to turn the exchange over to the Reedley Telephone Company, on payment to him of \$5,500 cash, 280 shares of stock in the corporation, and the assumption by the corporation of the amounts owing by him as above specified.

I am of the opinion that the needs of the public will be subserved by the granting of this application, and I submit herewith the following form of order:

#### ORDER.

E. W. Crosby having applied to this Commission for permission to sell the telephone exchange owned by him at Reedley and Reedley Telephone Company having applied to this Commission for permission to purchase this exchange, and also for permission to issue 11,000 shares of its capital stock of the par value of \$1.00 per share, the proceeds of which are to be used in the purchase of the telephone exchange now owned by E. W. Crosby, and also in paying certain obligations of E. W. Crosby to be assumed by Reedley Telephone Company, and a public hearing having been held upon this application, and the Commission being of the opinion that

the purposes for which Reedley Telephone Company desires to issue its stock are not in whole or in part reasonably chargeable to operating expenses, or to income,

*It is hereby ordered* that E. W. Crosby be and he hereby is authorized to sell, and that Reedley Telephone Company be and it hereby is authorized to purchase the telephone exchange at Reedley, now owned by E. W. Crosby, upon the condition that the price paid for the property herein authorized to be transferred shall not be taken before this Commission, or any other public authority as representing, for rate fixing or other purposes, the present value of the property transferred.

*It is further ordered* that Reedley Telephone Company be and it hereby is authorized to issue 11,000 shares of its capital stock at the par value of \$1.00 per share upon the following conditions and not otherwise, to wit:

1. The stock herein authorized to be issued shall be issued so as to net Reedley Telephone Company not less than the par value thereof.

2. The proceeds of the stock herein authorized to be issued shall be used to pay for the telephone exchange at Reedley, now owned by E. W. Crosby, and to liquidate the obligations of E. W. Crosby set forth in the opinion in this application, and which are to be assumed by Reedley Telephone Company in this transfer, and also to pay for the expenses of organizing Reedley Telephone Company, and for making betterments in its plant, all as set out in the opinion in this application.

Reedley Telephone Company shall keep separate, true, and accurate accounts, showing the receipt and application in detail of the proceeds derived from the sale of the stock herein authorized to be issued, and on or before the 25th day of each month shall make a verified report to the Commission showing the sale or disposition of the stock herein authorized to be issued, the terms and conditions of such sale, and the disposition of the proceeds derived therefrom, all in accordance with this Commission's General Order No. 24,\* which, in so far as applicable, is made a part of this order.

\*Printed in Commission Leaflet No. 9, at page 82.



The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 11th day of March, 1913.

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GREAT WESTERN POWER COMPANY, A CORPORATION, AND THE TOWN OF SUISUN CITY, A MUNICIPAL CORPORATION, *Complainants*, vs. PACIFIC GAS AND ELECTRIC COMPANY, A CORPORATION, AND PACIFIC TELEPHONE AND TELEGRAPH COMPANY, A CORPORATION, *Defendants*.

Case No. 351—Decision No. 562.

*Decided April 10, 1913.*

**Joint Use of Poles—Jurisdiction of Commission—Constitutionality of Commission's Power.**

Upon complaint asking that the defendants be required to permit the complainant, Great Western Power Company to use certain poles occupied jointly by the two defendants, it was objected that the Commission had no authority to grant the relief prayed for.

The Commission held that the statute expressly empowered it to take the action demanded and that it should not refuse to grant relief merely because it was objected that the provision of the statute was unconstitutional, since this question should be left to the determination of the courts.

The objection was dismissed and the defendants were required to answer.\*

*Guy C. Earl and Chaffee E. Hall*, for complainant, Great Western Power Company.

*Chaffee E. Hall*, and *C. J. Goodell*, for complainant, Town of Suisun City.

*C. P. Cutten*, for defendant, Pacific Gas and Electric Co.

*Pillsbury, Madison & Sutro*, for defendant, The Pacific Telephone and Telegraph Company.

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\*Editor's headnote.

## OPINION.

**ESHLEMAN, Commissioner:**

The above named complainants filed their complaint on the 30th day of December, 1912, praying that the defendants be required to afford to the Great Western Power Company the joint use of the poles used within the Town of Suisun City jointly by the Pacific Gas and Electric Company and The Pacific Telephone and Telegraph Company, on the ground that public convenience and necessity would be served by such joint use. Thereafter the defendants objected to the sufficiency of the complaint on the ground that this Commission does not have authority to grant the relief prayed for.

A hearing was held and arguments adduced touching the legal questions involved. I do not feel, however, that it is necessary at the present time to express an opinion upon the constitutional questions raised by the parties. Section 41 of the Public Utilities Act provides:

"Whenever the commission, after hearing had upon its own motion or upon complaint of a public utility affected, shall find that public convenience and necessity require the use by one public utility of the conduits, subways, tracks, wires, poles, pipes or other equipment, or any part thereof, on, over, or under any street or highway, and belonging to another public utility, and that such use will not result in irreparable injury to the owner or other users of such conduits, subways, tracks, wires, poles, pipes, or other equipment or in any substantial detriment to the service, and that such public utilities have failed to agree upon such use or the terms and conditions or compensation for the same, the commission may by order direct that such use be permitted, and prescribe a reasonable compensation and reasonable terms and conditions for the joint use. If such use be directed, the public utility to whom the use is permitted shall be liable to the owner or other users of such conduits, subways, tracks, wires, poles, pipes or other equipment for such damage as may result

therefrom to the property of such owner or other users thereof."

From a consideration of this Section it appears that there are certain questions of fact which must be determined after the submission of evidence which may be largely determinative of the legal questions involved. It must appear that the joint use "will not result in irreparable injury to the owner" of the facility, and of course the determination of this question will have to await the hearing of the case. Furthermore, in the face of a positive admonition of the statute empowering this Commission to take the action demanded in the complaint in a proper case, I do not feel that a tribunal such as this should, in the face of such provision of the statute, refuse to grant the relief, if otherwise found to be proper, on the ground that this provision is contrary to the Constitution. Not intimating at all that I think the provision is inconsistent with either the State or Federal Constitution I think it is unnecessary to pass upon the question now. If, after a hearing, the Commission is of the opinion that on the facts disclosed at such hearing the complainants are entitled to the relief prayed for, I think the relief should be granted, and if the defendants are dissatisfied with such disposition of the case they can as well after such decision as now avail themselves of any legal defence they may have against the action of the Commission, and the courts, which are of course the proper tribunals for determining this question, can be called upon for a decision.

The parties to this case do not raise any question as to a conflict of jurisdiction between the municipal corporation involved and the Commission. The complainants by bringing this action admit the jurisdiction of this Commission, and their attorneys, furthermore, take the position that the jurisdiction is not in the City but in the Commission. The attorneys for the defendants likewise admit the jurisdiction of this Commission to grant the relief prayed for if it exists anywhere. Such being the case it will not be necessary to discuss the question as to the power of the Town of Suisun City in this regard, and the case may be decided on the

theory that if jurisdiction exists anywhere it exists in this Commission.

I recommend that the protest be dismissed and defendants be required to answer, and it is so ordered.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 10th day of April, 1913.

## CONNECTICUT.

### Public Utilities Commission.

IN RE CAUSES OF AND CIRCUMSTANCES CONNECTED WITH THE  
ACCIDENT OCCURRING AT SUFFIELD ON THE 27TH DAY OF  
DECEMBER, 1912, IN THE OPERATION OF THE PLANT OR  
EQUIPMENT OF THE NORTHERN CONNECTICUT LIGHT AND  
POWER COMPANY, RESULTING IN INJURY TO MISS  
GERTRUDE M. GARITY.

Docket No. 638.

*Dated February 19, 1913.*

#### Faulty Wire Construction—Inspections—Reports—Regulations Governing Joint Use of Poles—Clearance of Wires.

Upon investigation of a serious accident resulting from the faulty construction and improper maintenance of the wires of The Northern Connecticut Light and Power Company upon a pole used jointly with The Southern New England Telephone Company, the Commission found that, although the line construction was in process of improvement and a part of the system was modern, the old line, which was soon to be abandoned, was more or less dangerous to patrons and the public generally.

The Commission recommended that, for the purpose of avoiding similar accidents in the future, (1) the two companies and all other public utility companies transmitting electricity, should institute a semi-annual inspection of their lines by competent persons and should make special inspections after storms or other disturbances; (2) reports of all dangerous conditions discovered should be made by the inspectors and filed with the Commission; (3) proper regulations governing the joint use of poles should be established; (4) wires transmitting the highest voltage should be located at least six feet above those of lesser voltage and properly installed and safeguarded, practically in accordance with the rules prescribed by The National Electric Light Association.\*

#### *By the Commission:*

The foregoing report† of C. C. Elwell, Chief Engineer and Inspector, is hereby approved, adopted, and made a part of

\*Editor's headnote.

†The essential facts reported by the Chief Engineer and Inspector are contained in the Commission's findings and consequently the report is not printed in this Leaflet.—Ed.

the Commission's "record of the causes, facts and circumstances" of said accident.

Based upon said report, an examination of statements of witnesses, and the report of an electrician employed by the Commission to make an investigation of the wiring and electrical construction connected with this case, the Commission makes the further record and suggestions pertaining to said accident, as follows:

On December 27, 1912, Miss Gertrude M. Garity was severely shocked and burned while in her home in Suffield by an alternating high potential current of electrical energy. The investigation of this accident and the determination of the causes thereof, involve the maintenance, care, construction and operation of the plant and equipment of two different public service companies, to wit, The Northern Connecticut Light and Power Company and The Southern New England Telephone Company.

Both of these companies are engaged in supplying the inhabitants of the Town of Suffield with a separate and distinct utility, but in certain instances have a joint use and occupancy of the same line of poles, to which their wires are attached, as is fully set forth in Mr. Elwell's report so far as directly pertaining to this accident.

The wires of the Light and Power Company are used for the transmission of electric current. From an investigation it appears that both the Light and Power Company and the Telephone Company permitted a conductor intended to carry an electrical current of high potential, known to be dangerous to life, and a guy wire located in dangerous proximity to said conductor, to remain so inadequately safeguarded from the liability, in fact, probability, of making contact with each other, as to clearly indicate careless and dangerous construction and highly improper care and maintenance. This dangerous condition was permitted to exist for a considerable period of time prior to the exceedingly sad accident herein described. The degree of negligence and legal responsibility therefor, as between the two companies, is a matter of judicial and not administrative determination, and the Commission will, therefore, not undertake to determine this phase of the case.

Both companies, apparently, recognized the necessity of some sort of safeguard at the *locus in quo*, long before the accident occurred, from the fact that both the Light and Power Company and the Telephone Company made separate claims of having placed a four-grooved porcelain insulator on the new pole erected by the Telephone Company on June 12, 1912, and of having attached the high potential wire to said insulator to keep this wire from contact with the pole. The use of such an insulator, however, even if only for a few days in temporary construction, was not, in the opinion of the Commission, proper construction or a reasonable safeguard because (1) this kind of an insulator is only intended for light service of moderate potential and is not a suitable insulator and support for a wire transmitting a primary potential rated at 2300 volts, especially under the varying effects of weather and strain to which this wire was liable to be subjected: and (2) because an insulator of this kind, fastened to a pole by an ordinary coach screw, does not afford even a secure temporary support for a wire as stiff and of such tension and liable to such pole and wind strains as the wire attached to it appears to have been.

The placing of a guy cable on this new pole at a point so close to the primary or high tension wire in question, that an insulator had to be used to keep them from coming in contact with each other, and then allowing this guy cable to pass so close to a secondary or low tension wire below that both the guy and the secondary wires were liable to come in contact with each other by a slight movement of the upper part of the pole and a similar movement of the secondary wire, should have been foreseen and guarded against, and the fact that such contact did result indicates faulty and inexcusable construction.

By reason of this improper construction, the strained primary wire finally resisted its frail tie on the grooved insulator and came in contact with the pole which, being wet, became sufficiently conductive for it to assume some of the high potential of the primary wire. The resistance of this contact to the current thus following, created heat which gradually carbonized and burned the pole away close to the wire until

the wire finally came in contact with the guy cable, where it was wrapped around the pole. The guy being in contact with the secondary or commercial lighting wire below, the high potential was thus transmitted to the secondary wire and from it by service wires to buildings in the immediate vicinity. The home of Miss Garity was one of these buildings and its electrical lighting system being thus charged, the current followed a path, by the medium of the hand with which Miss Garity touched the electric lighting fixture, through her body and the other hand that touched the pull chain of the toilet; this chain, being in metallic contact with the water pipe of the house, therefore established a path for the electrical current to the ground, thence possibly through the ground to trees through which the Light and Power Company's wires may have passed which, being wet by reason of the rain then falling, formed a path or several paths to the opposite primary wire, thus completing the necessary electrical circuit from and to its generating source; or, a path from the ground to the opposite primary wire may have been formed through some other medium. The result, however, would have been the same.

The resistance afforded by Miss Garity's hand to the electrical current, resulted in the generation of instantaneous and intense heat, which produced such deep tissue-destroying burns in the flesh of her hands that amputation was subsequently deemed necessary.

In consequence of the rapid transition which the electrical art is undergoing, particularly in the commercial transmission for light and power, many lines of poles and wires in this State (and probably other States) which were only intended for comparatively low tension service, have been hurriedly pressed into use for handling electrical currents of much higher potential than they were originally constructed for.

Excellent standards of line construction have been evolved by The National Electric Light Association and by progressive electrical interests, to replace the old and inadequate methods and, though this replacement is going on, there are many instances where a part of the electrical transmission



system is modern and the rest old and more or less dangerous. It is such a condition as this that we find at Suffield. There the Light and Power Company is improving its line construction on a party pole basis, but in conducting its business, much of the old pole line is being used until the new system is completed. As a result, the old line, soon to be abolished, is much neglected and its use is more or less dangerous to its patrons and the public generally.

Undoubtedly this highly undesirable condition will be remedied in time, but, in the meantime, preventatives and protective measures must be provided to safeguard the public against liability to such dangers and neglect. For this purpose, no hard and fast rules in regard to construction and equipment are advisable, not only because all unsafe conditions cannot be anticipated nor cured by rule, but on account of the rapidity with which improvement changes are developing in the use and transmission of electricity which are so far reaching that they can only be followed by automatically adaptable regulating methods.

### RECOMMENDATIONS.\*

As a means whereby similar accidents may be avoided in the future, the Commission suggests and recommends to The Northern Connecticut Light and Power Company, to The Southern New England Telephone Company, and generally to each and every other public service company generating, transmitting or supplying for public, general or other uses in this State, electrical energy of any character:

FIRST: That each such company institute a careful, systematic inspection of all its lines, devices and appliances by means of which it conveys or transmits such electrical energy; such inspection to be made semi-annually in the months of April and October of each year, and that a special inspection be made in addition thereto promptly after every heavy rain, sleet, snow or wind storm or other disturbance or circumstance whereby such lines, devices and appliances may have

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\*These recommendations were modified by the Commission on April 28, 1913. The modified recommendations will be printed in Commission Leaflet No. 18.—Ed.

become disarranged and rendered dangerous to life or property. That the person or persons making such inspection shall be competent to render such service and be employed by and responsible to the public service company supplying said electrical energy.

**SECOND:** That the person or persons making such inspection shall make a written report thereof, giving a comprehensive description of the location, circumstances and explanatory details of any apparently dangerous conditions found, with dates as to when discovered, and condition in which it was left at the time of the inspection. Such report to be made in duplicate and a copy thereof filed at the office of this Commission within five (5) days after said inspection.

**THIRD:** Joint usage and maintenance of a single line of party poles under proper regulations, by all public service companies having authority to establish and maintain poles and wires in public highways and streets within this State. All of said party poles to be of proper size and kind for the safest construction, operation and maintenance of the lines, devices and fixtures of each occupant. Each occupant to have a defined right of way on said poles.

**FOURTH:** In all cases where two or more companies occupy the same pole, the high potential electrical lines or wires transmitting the highest voltage be located above those of lesser voltage with a full clearance of at least six (6) feet, properly safeguarded and installed, practically according to the rules prescribed by The National Electric Light Association.

Dated at Hartford, Conn., this 19th day of February.  
A. D., 1913.

## **GEORGIA.**

### **Railroad Commission.**

#### **APPLICATION OF THE CO-OPERATIVE TELEPHONE AND TELEGRAPH COMPANY FOR AUTHORITY TO ISSUE STOCK AND BONDS.**

**File No. 10896.**

*Decided March 13, 1913.*

#### **Authorization of Stock and Bonds—Consolidation.**

Upon application by the Co-Operative Telephone and Telegraph Company for authority to issue ten thousand dollars of capital stock, one hundred and sixty thousand dollars of bonds for the purpose of purchasing the local exchanges and long distance lines of the Dawson Telephone Company, the Cotton Belt Telephone and Telegraph Company and the Blakely Telephone Company and forty thousand dollars of bonds for the purpose of making extensions and improvements therein, the Commission authorized the issuance of ten thousand dollars of stock for lawful corporate purposes and one hundred and sixty thousand dollars of bonds for the purpose of acquiring the aforesaid properties.\*

#### **ORDER.**

Upon consideration of the record in the above entitled matter, and it appearing that the petitioning Company has complied with all rules of the Commission and the law governing applications for authority to issue securities, and the Commission having held such hearings and examined such witnesses, papers and documents, and made such other investigations as were deemed advisable and necessary, and it being shown that the issuance of stock and bonds as prayed for is reasonable and necessary in the proper conduct of petitioner's business, it is

*Ordered:* That the Co-Operative Telephone & Telegraph Company be, and said company is hereby authorized to issue its Common Capital Stock in the total amount of Ten Thou-

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\*Editor's note prepared from record.

sand Dollars (\$10,000.00), the same to be sold at par for cash and the proceeds therefrom to be used for lawful corporate purposes.

*Ordered further:* That the Co-Operative Telephone & Telegraph Company be, and said company is hereby authorized to make, execute and issue its First Mortgage Twenty-five Year Six Per Cent. Gold Bonds, each of the denomination of Five Hundred Dollars (\$500.00), in the total amount of One Hundred and Sixty Thousand Dollars (\$160,000.00), the said bonds, or the proceeds therefrom, to be used for the following purposes, and for no other purposes, to-wit: First;—the purchase and acquisition, free from all liens and encumbrances, of the properties, rights and franchises, and all other assets of the Dawson Telephone Company, now operating local exchanges at Dawson, Georgia; Sasser, Georgia; and Bronwood, Georgia; with certain long distance lines and connections, all as set out in the petition in this case; Second;—for the purchase and acquisition, free from all liens and encumbrances, of the properties, rights, franchises, and all other assets, of the Cotton Belt Telephone & Telegraph Company, now operating local exchanges at Carnegie, Georgia; Cuthbert, Georgia; Bluffton, Georgia; Shellman, Georgia; Edison, Georgia; and Fort Gaines, Georgia; with certain long distance lines and connections, all as set out in the petition in this case; Third;—for the purchase and acquisition, free from all liens and encumbrances, of the properties, rights, franchises and all other assets of the Blakely Telephone Company, now operating local exchanges at Blakely, Georgia; Arlington, Georgia; Leary, Georgia; Kestler, Georgia; and Columbia, Alabama; with certain long distance lines and connections, all as set out in the petition in this case.

*Provided,* that no more of the Two Hundred Thousand Dollars (\$200,000.00) of bonds contemplated in the Mortgage to be executed by the Co-Operative Telephone & Telegraph Company to secure the issue of bonds herein authorized shall be issued except upon the future approval of this Commission, and then only when necessary and in such amounts as may be reasonably required for the purposes

specified in the Act of the General Assembly, of Georgia, approved August 22nd, 1907.

*Ordered further:* That the Co-Operative Telephone and Telegraph Company make report to this Commission within ninety days from this date showing in detail what disposition has been made of the stock and bonds herein authorized to be issued, or any part thereof, and if disposition has not been effected within that time, said Company shall regularly each ninety days thereafter make such report until disposition is made. But this duty rests upon the Co-Operative Telephone & Telegraph Company alone, and it shall not be incumbent upon the purchasers or takers of any of said stock or bonds to see that this provision of this order is complied with.

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**MCDUGALD, OUTLAND AND COMPANY vs. STATESBORO TELEPHONE COMPANY.**

**File No. 10906.**

*Decided April 1, 1913.*

**Construction of Contract—Jurisdiction of Commission—Farmer Line Service—Discontinuance of Service.**

On January 23, 1913, McDougald, Outland and Company complained, by letter, that the Statesboro Telephone Company refused to continue free service to Statesboro from the complainant's store at Clito, which was on a Farmer's Line. The Company's reply, dated February 6, 1913, denied that the free service in question had ever been furnished, alleging that it would be in contravention of the Company's rule providing that free service would not be furnished to any one within one mile of any of its toll stations. Replying to this on February 18, 1913, the complainant claimed that it was entitled to the service under the contract entered into between the Statesboro Telephone Company and the Eureka Telephone Company, a Farmer's Line in which it was a stockholder, and further maintained that this free service had theretofore been rendered.

On March 4, 1913, the Commission required the Company to restore the service in question, the discontinuance of which without authority was held to be in direct violation of the Commission's General Order No. 14.\* Thereupon the Telephone Company took issue as to the fact of the discontinuance of the service demanded, which it claimed had never been given, and a hearing was had upon the question on March 25, 1913. Thereafter, on April 1, 1913, the Secretary of the Commission wrote to the complainant dismissing the complaint, as follows:†

\*See II Commission Telephone Cases, 12.

†Editor's note prepared from record.

"Referring again to your complaint against the Statesboro Telephone Company, I beg to say that the Commission has given careful consideration to the record in this matter and to the evidence and argument submitted at the hearing had before it on March 25th. I have been directed by the Commission to advise you that in its opinion the question of the performance of the contract involved in this case is one for the courts to decide, but the Commission is clearly of the opinion that the use of the Farmer's Line 'phone prayed for by you was not contemplated by this contract of service and the Statesboro Telephone Company should not be required to render the unlimited service which you demand between your store in Clito and the Statesboro Exchange. Your complaint before the Commission is therefore dismissed."

## **KANSAS.**

### **Public Utilities Commission.**

**IN THE MATTER OF THE APPLICATION OF THE COATS AND  
SOUTHWESTERN TELEPHONE COMPANY AND THE WELLS-  
FORD TELEPHONE COMPANY FOR PERMISSION TO ESTABLISH  
FREE EXCHANGE BETWEEN THE TWO COMPANIES.**

**U. R. A. No. 71—Docket No. 567.**

*Decided February 21, 1913.*

**Free Interchange of Telephone Service. [Ed.]**

### **ORDER.**

Now on this 21st day of February, 1913, comes on to be heard the application of the Coats and Southwestern Telephone Company, a corporation, and the Wellsford Telephone Company, a corporation, for authority to establish free exchange between the two above named companies and the Commission, having heard the application and being fully advised in the premises, finds that the same should be granted.

*It is therefore ordered,* That the Coats and Southwestern Telephone Company and the Wellsford Telephone Company be, and the same are hereby authorized, effective March 1, 1913, to establish free exchange between the two above named companies.

IN THE MATTER OF THE APPLICATION OF N. P. ROSVALL,  
OWNER, FOR PERMISSION TO SELL HIS TELEPHONE  
PROPERTY AT ESBON, KANSAS, TO THE MUTUAL TELE-  
PHONE COMPANY, AT ESBON, KANSAS.

Docket No. 572.

*Decided March 27, 1913.*

**Sale to Mutual Telephone Company—Filing of Rate Schedule—  
Continuance of Existing Rates, Service and Connections.**

The Commission authorized the sale of the telephone property of N. P. Rosvall to the Mutual Telephone Company, upon condition that the Mutual Telephone Company file a schedule of its rates and continue in force all the rates, rules, connections and service theretofore afforded by N. P. Rosvall to his subscribers, connecting companies and the general public.\*

**ORDER.**

Now on this 27th day of March, 1913, comes on to be heard the application of N. P. Rosvall, of Esbon, Kansas, for permission to sell to the Mutual Telephone Company, a corporation, with principal place of business in the City of Esbon, Kansas, his telephone exchange, consisting of building, poles, wires, instruments, tools, and all other appurtenances, together with all rights and franchises,

And due notice having been given of the hearing of said application on the above-mentioned date, and the said N. P. Rosvall being present in person, and the Commission having heard the evidence, and being fully advised in the premises,

*Ordered*, That the application herein be and the same is hereby granted, permitting the said N. P. Rosvall to sell and the said Mutual Telephone Company to buy the plant, equipment and franchises aforesaid, it being

*Further ordered*, That the permission herein given is upon the express understanding that the said Mutual Telephone Company, after taking possession of the telephone exchange and plant of the said N. P. Rosvall, shall file with this Commission on or before April 15th, 1913, a schedule of its rates,

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\*Editor's headnote.



tolls, charges, classifications, etc., as provided by Section II of Chapter 238 of the Laws of 1911.

*It is further ordered*, That the said Mutual Telephone Company, as a condition precedent in exercising the privilege granted herein, shall continue in force, until otherwise ordered or permitted by order of this Commission, all rates, rules, connections and service which are now rendered by the said N. P. Rosvall, to his subscribers, connecting companies and the general public.

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IN THE MATTER OF THE APPLICATION OF THE LONGTON TELEPHONE COMPANY FOR PERMISSION TO ADVANCE ITS RATES FOR BUSINESS SERVICE IN THE CITY OF LONGTON, KANSAS.

Docket No. 560.

*Decided April 9, 1913.*

**Inadequate Return—Increased Rate Authorized. [Ed.]**

**ORDER.**

Now on this 9th day of April, 1913, this matter comes on to be heard, notice having been regularly given of such hearing. There appears John Marshall, Attorney for the Public Utilities Commission of the State of Kansas, F. B. MacKinnon for R. F. Cooper, Manager of the Longton Telephone Company, Frank Organ for the Busbee Telephone Company, and thereupon Mr. F. B. MacKinnon asks and is granted leave to withdraw the application of Mr. Cooper, so far as it concerns the forty-one subscribers of rural telephone companies, and thereupon the evidence is submitted to the Commission, and from the evidence the Commission does find that a charge of \$1.00 per month for business telephones in the city of Longton is not compensatory, and that the charge should be \$1.50 per month.

*It is therefore by the Commission ordered*, That the said R. F. Cooper be permitted to raise the charge for business telephones in the City of Longton, from \$1.00 per month to \$1.50 per month.

IN THE MATTER OF THE APPLICATION OF THE DIGHTON TELEPHONE COMPANY FOR PERMISSION TO ESTABLISH A TOLL RATE OF 15 CENTS BETWEEN DIGHTON AND HEALY, KANSAS.

Docket No. 487.

*Decided April 15, 1913.*

Division of Interline Revenue.

*Ordered*, That the rate for service between The Dighton Telephone Company and The Healy Telephone Company shall be 15 cents per message, which shall be divided equally between the companies.\*

ORDER.

Now on this 15th day of April, 1913, this matter comes on for hearing, and comes F. B. MacKinnon, representing The Dighton Telephone Company, and W. H. Stanley, appearing for The Healy Telephone Company, and thereupon the said parties introduced their evidence, from which evidence the Commission does find that there should be established between Dighton and Healy a toll charge of 15 cents, and that the same should be divided equally between The Dighton Telephone Company and The Healy Telephone Company.

*It is therefore by the Commission ordered*, That from and after the first day of June, 1913, the said Dighton Telephone Company and the said Healy Telephone Company shall each collect a charge of fifteen cents from persons desiring to talk to any subscribers of the other telephone company, which sum shall be divided equally between the said telephone companies.

*And it is further ordered*, That the said telephone companies account to each other for such service on the first day of each month.

*It is further ordered*, That the order of the Commission† heretofore, on the 9th day of January, 1913, be modified as above set forth.

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\*Editor's headnote.

†Printed in Commission Leaflet No. 14, at page 25.

## LOUISIANA.

### Railroad Commission.

#### RAILROAD COMMISSION OF LOUISIANA *vs.* THE WESTERN UNION TELEGRAPH COMPANY.

No. 1819.

Order No. 1552.

*Decided April 17, 1913.*

#### Violation of Rules and Regulations by Closing Office at Jeanerette.

Upon complaint by citizens of Jeanerette that The Western Union Telegraph Company had arbitrarily closed its office at Jeanerette without the consent of the Commission, the Commission found that The Western Union had made an arrangement to handle telegrams over the lines of the Cumberland Telephone Company, and that this service would be available twenty-four hours daily, including Sundays, whereas the telegraph office discontinued had been open only from about 8:00 A. M. to 7:00 P. M. on week days and closed on Sunday. It was further found that there was a Western Union telegraph office in the depot of the Southern Pacific Railroad at Jeanerette.

#### Violation of Commission's Rules.

*Held:* That, although the action of The Western Union in closing its office without the Commission's approval constituted a technical violation of the Commission's rules, there was no wilful intent to disregard these rules; that the imposition of a penalty on this account would be arbitrary for the reason that the Company has retained an office at the railroad station and established a new office in the office of the Cumberland Telephone Company; but that such changes should not be made in the future without first consulting the Commission and the people of the community affected.

#### Substitution of Service by Telephone.

*Held:* That, through its arrangement with the telephone company, the Western Union has substituted a service superior to that which previously existed in Jeanerette, by affording all patrons direct, continuous telegraphic service to all parts of the world, without additional charge for the telephonic service to the nearest Western Union operator.

**Elimination of Competition—Increase of Rates.**

*Held:* That the Commission does not apprehend that this arrangement will drive out competition, and will not permit the rates for telephonic or telegraphic service to be advanced.

**Secrecy of Messages.**

*Held:* That the apprehension that the secrecy of telegrams will be destroyed because handled by women instead of men is wholly unfounded.\*

**OPINION AND ORDER.**

This investigation was instituted by the Commission upon a complaint filed by certain citizens of Jeanerette that The Western Union Telegraph Company had arbitrarily, and without the consent of the Railroad Commission, closed, discontinued and dismantled its telegraph office at Jeanerette, Louisiana, and removed its telegraph operator.

The Commission has made a thorough investigation of the complaint, and it finds that The Western Union Telegraph Company, has, through an existing contract with the Cumberland Telephone Company, arranged to handle telegrams over the lines of the telephone company as follows: When a party desires to send a telegram, he may do so by writing the telegram out, delivering it to a messenger of The Western Union Telegraph Company, or by sending it direct to the office of the telegraph company; or he may telephone his telegrams directly to a telegraph operator at the nearest Western Union Telegraph station, without any additional cost for the toll service furnished him by the telephone company. The service thus rendered is continuous for twenty-four hours daily, including Sundays. For many years there was a separate telegraph office in the town of Jeanerette. This telegraph office received and delivered written messages through its operator at that point. The office was open only during the daylight hours, or from about 8 A. M. to about 7 P. M., daily. It was closed on Sundays. Its revenue during the recent months previous to the change amounted to approximately \$60.00 a month.

The principal complaint seems to be that there is a greater opportunity for divulging the secrecy which should surround

\*Editor's headnote.

the delivery of written telegrams under the present method of handling such business than under the old method of delivering the written telegram to Morse operators and having it sent over telegraph wires to its destination.

The evidence shows that there is a Western Union Telegraph office in the depot of the Southern Pacific office at Jeanerette, open between 7 in the morning and 6 or thereabouts in the afternoon. The operator at this office is instructed to transmit written telegrams for such as desire to use the service. If a party desiring to send a telegram objects to telephoning his message to the nearest operator, he may send it in writing to the Morse operator at the depot during the hours that this office is open, which are about the same as those of The Western Union Telegraph Company's separate office, when it was maintained in Jeanerette. However, this would not afford service during the night or on Sundays.

It is true that technically there may be a violation of the Rules of the Commission—that is to say—The Western Union Telegraph Company should have obtained the consent of the Commission to discontinue its separate telegraph office at Jeanerette and combine its facilities with those of the telephone company. However, the evidence is not sufficient to warrant the Commission to impose a penalty upon The Western Union for discontinuing its separate office, because it left an office at the depot, and it has established a new office in the office of the Cumberland Telephone Company, thus affording the people of Jeanerette two facilities by which they may send telegrams. It would be an arbitrary action on the part of this Commission, under these circumstances, to attempt to impose a penalty.

It should be said here, however, that such changes should not be made in future without first consulting the Commission, as well as the people of the community affected. In this case, The Western Union Telegraph Company has substituted a highly superior service in the town of Jeanerette to the service which previously existed, by affording all patrons of the telegraph company direct, continuous telegraphic service to all parts of the world, without additional

cost for the toll service necessary to connect a subscriber with the nearest Western Union Telegraph office, in other words, the party who desires to send a telegram, instead of giving his message to a telephone operator, gives it directly to a Western Union Telegraph operator if he so desires.

Some fear was expressed by counsel who appeared for the principal complainant that this was a scheme on the part of The Western Union Telegraph Company to eliminate competition and thereafter to increase the telegraphic rates. Our answer to this is that this Commission has not permitted telegraph or telephone rates to be advanced except in those instances where some sections of the State were receiving free telephone service over long distance toll lines for unreasonable distances. This was gross discrimination, and in order to bring the entire rate system into proper adjustment and to eliminate unjust discrimination and place all users of the telephone and telegraph service upon an equality, the Commission itself established reduced toll rates, and required them to be assessed without discrimination. There should be no fear that telegraphic rates voluntarily established will be raised. We do not anticipate that the present system will drive out competition; but in no event will rates for telephone or telegraph service be advanced as long as this Commission has the power to prevent it. The Interstate Commerce Commission, we feel sure, will not tolerate advances in rates for interstate service. Certainly in the instant case the service has been vastly improved, and we can see no reason for apprehension; and the apprehension on the part of the complainants that the secrecy of the telegram will be destroyed because handled by women instead of men is wholly unfounded. There are thousands of women telephone and telegraph operators in the service, and we have never received a complaint that they have divulged the secrecy of the telegrams which pass through their hands. They should, of course, be impressed with the necessity of secrecy in handling telegrams.

There is a Western Union Telegraph office in Jeanerette. In fact, the records show that that there is a double facility for sending telegrams over the Western Union wires, and we

cannot, therefore, find any wilful intent upon the part of The Western Union Telegraph Company to disregard the Commission's rules by making the change that was made in its office at Jeanerette.

The premises considered, it is

*Ordered*, That the case be, and the same is hereby dismissed.

By order of the Commission, Baton Rouge, Louisiana,  
April 17th, 1913.

## **NEBRASKA.**

### **State Railway Commission.**

#### **IN RE RATES OF STEELE CITY TELEPHONE COMPANY.**

**Application No. 1668.**

*Decided January 23, 1913.*

**Rates—Use of One Telephone by Two Parties—"Out of Hour"  
and Night Calls. [Ed.]**

The Steele City Telephone Company was granted authority, subject to complaint, to establish a rate of 50 cents per month in addition to its regular rate of \$1.00 per month, for the use of one telephone by two parties. The company was also authorized to establish a rate of ten cents for night and out-of-hour calls, and it was directed that the company be notified by letter of the action taken.\*

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#### **IN RE APPLICATION OF THE BERTRAND TELEPHONE COMPANY FOR AUTHORITY TO INCREASE RATES.**

**Application No. 1599.**

*Decided February 15, 1913.*

**Increase of Rates—Valuation of Property—Reproduction Cost—  
Present Value—Depreciation—Rate of Return—Form  
of Accounts—Purchase of Subscribers' Instruments.**

Upon application by the Bertrand Telephone Company for authority to increase its rates for business telephones from \$1.50 to \$2.00 per month, and to charge 25 cents per month additional for desk telephones, the Commission made a physical valuation of the applicant's property, finding the reproduction cost new to be \$18,886.50 and the present value \$14,442.59. By deducting the accrued depreciation from the reproduction cost new the

\*Informal ruling contained in the minutes of the Commission for January 23, 1913.—Ed.



so-called present depreciated value was found to be \$13,624.78. After allowing 8 per cent. upon the reproduction cost new of the depreciable property for current maintenance and deferred depreciation, the Commission found that the past year's revenues showed a net balance available for dividends of about 6 per cent. on the depreciated value, and that, if the rates were advanced as proposed, a net return of 7.6 per cent. upon this value would be received.

*Ordered*, That the proposed rates be authorized;

That the applicant open a set of double entry books, as prescribed by the Commission, and that the amount entered therein as the basis on which the books shall be kept, shall be the present depreciated value of \$13,624.78;

That the applicant set aside annually as a maintenance and depreciation fund, \$1,328.00, being 8 per cent. upon the depreciable property, and enter this amount in its books in monthly sums of \$110.66;

That the applicant purchase all telephones owned by subscribers.\*

## OPINION.

### HALL, Commissioner:

This case came on for hearing upon the petition of said Company on January 10, 1913, for authority to increase its business 'phone rates 50 cents per month, and to make an additional charge for 25 cents per month for all desk 'phones.

In connection with these proceedings, a valuation of the telephone property of the said company was made by the engineers of this Commission, and a study in detail was made by U. G. Powell, Accountant for the Commission. The final summary sheet as of December 20, 1912, of the physical valuation department shows the properties of said company to be as follows:

SUBJECT	REPRODUCTION VALUE NEW	CONDITION PER CENT	PRESENT VALUE
1. Right of way and real estate.—None.			
2. Buildings and fixtures	\$ 115.00	92	\$ 105.80
3. Central station equipment	861.00	58	499.38
4. Sub-station equipment	3,944.99	80	3,155.99
5. Distribution, exchange and toll lines	11,055.75	70.8	7,824.06
6. Tools, vehicles and utensils	131.00	60	78.60
7. Stores and supplies	248.50	100	248.50
8. Transportation of men and material.—None.			
9. General expenditures	2,530.26	100	2,530.26
<b>GRAND TOTAL</b>	<b>\$18,886.50</b>	<b>76.5</b>	<b>\$14,442.59</b>

\*Editor's headnote.

The books of the company have not been kept in such a manner as to make it possible to find the investment cost. It appears that the owner and manager has been careful to keep the cash account correctly, the plan being to charge the cash account with all money received from any source whatsoever, and to credit the cash account with all money paid out.

For the purpose of showing the earnings and expenses of the said company, Mr. Powell has taken the period from January 1, 1911, to January 1, 1912, and has prepared the following table:

<b>EARNINGS</b>		
Rental, toll and switching, as per cash received	\$4,202.90	
Rental and toll account receivable, as per ledger	537.75	
<b>TOTAL EARNINGS</b>		<b>\$4,740.65</b>
<b>DEDUCTIONS FROM EARNINGS</b>		
Tolls paid Neb. Tel. Co.	\$359.96	
Switching service to Elwood exchange	20.60	
Switching service to Loomis and Holdrege	123.10	
<b>TOTAL</b>		<b>503.66</b>
<b>NET GROSS EARNINGS</b>		<b>\$4,236.99</b>
<b>EXPENSES</b>		
Operator's hire, light, fuel, stationery, etc.	\$1,495.38	
Livery and railroad fare	125.65	
Freight, drayage and express	114.60	
Legal expenses	25.00	
<b>TOTAL</b>		<b>\$1,760.63</b>
<b>MAINTENANCE</b>		
Total paid for material	\$ 494.56	
Less new construction	75.00	
<b>Current repairs and depreciation</b>	<b>\$ 419.56</b>	
<b>Taxes</b>	<b>74.06</b>	
<b>Manager's and lineman's salary</b>	<b>1,000.00</b>	
<b>TOTAL</b>		<b>1,493.62</b>
<b>TOTAL EXPENSES</b>		<b>3,254.25</b>

**\$ 982.74**

It will be seen that the above table shows that the total earnings amount to	\$4,740.65
That the amounts paid to the Nebraska Tel. Co., the Elwood Exchange and to Loomis and Holdredge, for tolls and switching charges amount to	503.66
Leaving a net balance of	\$4,236.99
It will also be seen that the general expenses amount to	\$1,760.63
That the maintenance, less \$75.00 paid out for new construction is	419.56
That the taxes amount to	74.00
It was shown that Mr. Bardshar, owner and manager, gives his entire time to the plant, for which we have allowed, per year	1,000.00
This brings the total expenses to	3,254.25
Which leaves a net income of	\$ 982.74
or 5.1 per cent. on the reproduction new of \$18,818.79, as found by the engineering department.	

For the purpose of arriving at the amount of depreciable property, and the amount of property on which rates may be based, the plant value has been reduced by reason of depreciation from \$18,818.79 to \$13,624.78, present depreciated value.

Allowing 8 per cent. for current maintenance and deferred depreciation, the normal amount per year is \$1,328.00. The amount paid out for these items for the year was \$1,159.81, which leaves \$168.19 to be deducted from the net income of \$982.74, said amount to be placed in the depreciation reserve fund, which leaves a net balance for dividends of \$814.65, or 6 per cent. on the present value of \$13,624.78.

The application contemplates an advance of 50 cents per month, or \$6.00 per annum, on all business 'phones only, which were at the end of the calendar year 1911, thirty-eight. This would increase the earnings \$228.00 per year. This amount, added to the net return, as shown above, of \$814.65, would amount to \$1,042.65, or 7.6 per cent. on the depreciated value of \$13,624.78.

The Commission further finds that a part of the subscribers are furnishing their own 'phones. The company should pay the subscribers for such 'phones. The Commission also finds that the company is not keeping a proper sys-

tem of books, and that the rates applied for are not unreasonable, and the advance as prayed for should be granted.

### ORDER.

*It is therefore ordered,* That the said company shall open up a set of double entry books, as prescribed by the Commission, on the 1st day of April, 1913, and that the amount entered on said books as a basis on which the books shall be kept, shall be \$13,624.89.

*It is further ordered,* That the said company shall buy all 'phones that are owned by the subscribers, at a price to be agreed upon by both parties, and should the parties not agree, then and in that case the matter shall be referred to this Commission.

*It is further ordered,* That the advance as prayed for be granted, and that the said company shall charge, beginning April 1, 1913, \$2.00 per month for business wall 'phones and \$2.25 per month for all business desk 'phones.

*It is further ordered,* That the said company shall set aside as a maintenance and depreciation fund the amount of 8 per cent. upon its depreciable property, which amounts to \$1,328.00 per year. The said amount shall be set up upon the books monthly in the amount of \$110.66.

Made and entered at Lincoln, Nebraska, this 15th day of February, 1913.

## NEW YORK.

### Public Service Commission—Second District.

IN THE MATTER OF THE COMPLAINT OF FOREST HILLS TAX-PAYERS' ASSOCIATION OF ELMHURST *vs.* NEW YORK TELEPHONE COMPANY.

Case No. 3373.

*Decided April 16, 1913.*

Reduction of Toll Rate. [Ed.]

### ORDER.

The case involves principally the question of telephone rates for calls from subscribers' stations within the so-called exchange area of Forest Hills, in the Borough of Queens, to points within Zone 1 in the Borough of Manhattan.

A public hearing was held on the 13th day of January, 1913, at which the testimony of various witnesses for the complainant and respondent was introduced, and briefs were subsequently filed by counsel for both parties. Upon consideration whereof, it is

*Ordered*, that respondent, New York Telephone Company, be and it is hereby directed and required to cease and desist on or before June 1, 1913, from collecting and receiving any greater charge for telephone calls between subscribers' stations within its present so-called Forest Hills exchange area and Zone 1 in the Borough of Manhattan, New York City, than 5 cents per call.

*Further ordered*, that respondent shall notify the Commission on or before April 25, 1912, whether it accepts and will obey the provisions of this order.

PATRICK O'DAY *vs.* NEW YORK TELEPHONE COMPANY.

Case No. 3429.

*Decided April 16, 1913.***Extension of Telephone Line—Guarantee from Prospective  
Subscribers—Extra Mileage Charges—Toll Rates.**

Upon complaint requesting that respondent's telephone line be extended to complainant's residence, it appeared that the respondent had offered to make the connection, provided the complainant would pay the cost of building the necessary two-mile extension, estimated at \$670.00, and an annual rental of \$66.00. This rental was composed of the exchange rate of \$18.00 for the respondent's Williamsville exchange and an extra mileage charge of \$6.00 per quarter mile for the two miles. The service to be rendered was multi-party business service in the respondent's Williamsville exchange, with a five-cent toll rate to Buffalo. It further appeared that the desired extension would be used by at least eight subscribers instead of the complainant alone. The line of the Pioneer Telephone Company ended about one and one-half miles from the complainant's residence, but the prospective subscribers did not wish to be connected with this company's line because its service was poor and the connection would be with its Clarence exchange from which a toll was charged to Williamsville and a fifteen-cent toll to Buffalo.

The Commission held that, since the respondent had a number of multi-party lines serving as few as eight subscribers over a distance of two or more miles at the ordinary multi-party line rates, it should be required to make the extension requested, and further, that the rates provided in the Commission's order would yield a reasonable return upon the cost of the line and the use of the instruments after deducting the cost of operation including maintenance.

*Ordered*, That the respondent, New York Telephone Company, build the extension necessary to serve the complainant and at least seven other subscribers who shall file a bond agreeing to take multi-party line service for three years at the Williamsville exchange rate plus an extra mileage charge of \$2.00 per quarter mile; provided (1) that such bond may provide for the payment of the full rental, as for eight subscribers, by less than that number, if necessary; (2) that the respondent may arrange for the Pioneer Telephone Company to make the connection, if free service is thereby afforded to the respondent's Williamsville exchange; and (3) that the toll rate to Buffalo shall not exceed the toll rate between Williamsville and Buffalo.\*

**OPINION AND ORDER.**

**Respondent's line is constructed within about two miles of complainant's residence which is located about four miles**

\*Editor's headnote.

east of Williamsville on the Buffalo-Batavia state road. The Pioneer Telephone Company's line now ends about one and one-half miles to the east of complainant's residence. Complainant applied to respondent, New York Telephone Company, for a connection with its line, and thereupon respondent offered to make the connection on terms described as follows: Complainant to pay for building the line over the two miles distance, the cost being estimated at \$670, and thereafter to pay an annual rental charge of \$66. This annual charge is made up by taking the base rate for the Williamsville exchange telephone service, which is \$18, and adding thereto a mileage charge of \$48, which is equal to \$6 per quarter mile. The service to be rendered would be a multi-party business service. With this connection, complainant would receive service in respondent's Williamsville exchange and pay a five-cent toll rate to Buffalo in which he is specially interested. This offer so made by respondent would give it an extension of line for two miles without cost, and an annual charge for service approximating 10 per cent. of the cost. It is fair to say, however, that the offer was based entirely upon the assumption that but one subscriber, the complainant, would use the line. At the hearing it was developed that at least eight subscribers would use the line and that an acceptable guarantee would be furnished by complainant covering the use of the line by these eight subscribers for a period of not less than three years or money payment equivalent to the amount of the rates which all the subscribers in using the line would pay. This is concededly a totally different situation, and one which should and must change the terms on which the connection should be made. Respondent has a number of multi-party lines upon which it serves as few as eight subscribers over a distance of two miles or more and for which service it charges the ordinary multi-party base rates. Respondent cannot complain, therefore, if for this service it should be required to make the extension, as it has offered to do, and if it should be authorized to charge for the service on this extended line its Williamsville base rate of \$18 per year plus a mileage charge of \$2 per quarter mile, or \$16 additional per year,

according, however, as the mileage may be. This would give respondent an annual charge on the two-mile basis of \$34 for eight subscribers as a minimum, equal to a total of \$272. This should be fully sufficient to provide a reasonable return upon the cost of the line and use of instruments after deduction of the cost of operation including maintenance.

The Pioneer Telephone Company operates to the east and north of complainant's residence, with its central exchange at Clarence. In the past its service has not been good. Some of its lines appear to be overloaded. The farmers along the Buffalo road prefer the Williamsville exchange since their markets are at Williamsville and Buffalo. The toll rate for the Williamsville exchange area to Buffalo is 5 cents. The Pioneer Telephone Company's toll rate is 15 cents. It is said to be contemplating a two-number toll service to Buffalo for 10 cents, keeping a particular person rate in effect at 15 cents. The objection of complainant and his associates to the Pioneer service is that they would be connected with the Clarence exchange, and they would have to use the poorer service of the Pioneer Company besides paying a toll rate to Williamsville and a toll rate to Buffalo which is now three times the toll rate for the Williamsville exchange.

The New York Telephone Company and the Pioneer Telephone Company have a traffic agreement under which connected service is provided for, and the operation by the Pioneer company in certain territory is recognized, but any agreement to the effect that the Pioneer company shall have a monopoly of the local service territory east of the New York Company's present line is disclaimed.

The Commission is of the opinion that respondent, New York Telephone Company, should make the extension, upon the filing with it of the indemnity bond offered by complainant at the hearing providing for at least eight subscribers to the line as extended and their continuance as subscribers at standard rates in effect for a period of at least three years. If for any reason the respondent shall arrange for the extension of line to be made by the Pioneer Telephone Company, the respondent, New York Telephone Company, should provide for the use of the line connecting with its



Williamsville exchange by complainant and his associates upon the base rate of \$18 plus \$16 mileage and a 5-cent toll charge to Buffalo. Respondent should be at liberty to work out the details in its own way. It is, therefore,

*Ordered*, that the respondent, New York Telephone Company, be and is hereby directed to make, as a reasonable addition to its line, the extension along or near the Buffalo-Batavia state road from the end of its present line in that vicinity to connect with complainant's residence on that road and at least seven other subscribers located on or near that road who shall previous to such extension by respondent, individually or by complainant and one or more of said other subscribers, file with respondent an indemnity bond covering the taking by said subscribers of multi-party line service as connected with respondent's Williamsville exchange for a period of three years at a rate not less than \$18 per annum as a base rate plus \$2 per quarter mile as line mileage and such further charge as may result from any reasonable addition to the base rate at Williamsville as may be established hereafter by respondent during such period of three years for subscribers generally in the Williamsville exchange area; provided (1) that such indemnity bond may provide for the payment of the full amount of the rentals as for the eight subscribers by a less number of subscribers in case eight subscribers shall not during the three year period continuously take the service; and provided (2) that respondent may arrange with the Pioneer Telephone Company for the making of such line extension and for service thereover with direct connection for complainant and such other subscribers with the Williamsville exchange of respondent, and provided (3) that the toll rate charged between complainant's and such other subscribers' stations and the city of Buffalo shall not exceed the toll rate between Williamsville and Buffalo.

*Further ordered*, that complainant shall furnish the said indemnity bond to the respondent on or before May 10, 1913, and that upon the filing with respondent of said indemnity bond, the respondent shall proceed promptly with the said extension as a reasonable addition to its line and put the

same in operation with the service as hereinabove provided before June 15, 1913.

*Further ordered*, that respondent, New York Telephone Company, shall notify the Commission on or before April 25, 1913, whether it accepts and will obey the provisions of the order in this proceeding.

## **NORTH DAKOTA.**

### **Railroad Commission.**

**IN RE INQUIRY OF E. W. EVERSON.**

*Dated March 5, 1913.*

#### **Withdrawal of Service.**

The Commission has jurisdiction to authorize or prevent the closing of a central office by a telephone company, and application must be made to the Commission for permission to take such a step.\*

In reply to your inquiry this day submitted as to whether a telephone company may close a central station at a particular station at a particular town and remove the switchboard therefrom, I would reply that under that statute relating to the duties of the Railroad Commission, as amended by the laws of 1911, the Railroad Commission has supervision of all telephone companies in the state, and it would be within its province to determine all questions of this kind.

Before a company can close a central at any town it will be necessary for it to make application to the Railroad Commission for permission to take such a step, whereupon the Commission would investigate the application, and if it found that such removal would operate to the inconvenience or disadvantage of the patrons of the town, the permission would not be granted, and on the other hand, if such removal would not result injuriously to such patrons and would be for the best interests of all concerned, it probably would be granted.†

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\*Editor's headnote.

†Informal ruling contained in a letter of the Commission, dated March 5, 1913, and issued over the signature of the President of the Commission.—Ed.

## OHIO.

### Public Service Commission.

#### MAYOR BUSBEY OF SOUTH VIENNA, OHIO, *vs.* THE CENTRAL UNION TELEPHONE COMPANY.

*Dated April 4, 1913.*

#### Withdrawal of Service—Division of Territory—Jurisdiction of Commission to Issue Injunction.

Informal complaint was made against the Central Union Telephone Company that, having established physical connection with the lines of the Plattsburg Home Telephone Company, it proposed to withdraw its local service at South Vienna, and to leave the field to the Plattsburg Home Telephone Company, with the result that the flat rate service to Springfield would no longer be available. In response the Commission stated that, in granting the application of the Central Union Telephone Company and the Plattsburg Home Telephone Company for physical connection, it did not contemplate that any diminution of service would result, but that, nevertheless, it had no authority to issue anything in the nature of an injunction, either mandatory or prohibitive, and consequently could not force the Central Union Telephone Company to continue the service in question.\*

The Commission has considered the report of its Expert regarding the proposed withdrawal of the Bell Telephone Company from local service around South Vienna. This action on the part of the Bell Telephone Company is not a necessary nor a logical result of the exercise of the authority which the Commission granted the Bell Telephone Company and the Plattsburg Home Telephone Company to form a physical connection. The Commission, in fact, did not contemplate that there would be any diminution of service by either company in that neighborhood. That question, however, was not before the Commission at that time and was not a necessary element of the case.

The Commission believes the Bell Telephone Company should continue to furnish service in that territory, but does

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\*Editor's note prepared from record.

not have the power to enforce such a requirement. As suggested to you upon the occasion of your visit to the office of the Commission, your remedy to prevent the withdrawal of the Bell Telephone Company from service in this locality is to be sought in a court of law and it appears that that is still the only effective course open for you to pursue at this time.

The Legislature has not conferred upon the Commission the authority to issue anything in the nature of an injunction, either mandatory or prohibitive, and that seems to be the only action that would meet the emergency which confronts the people of your neighborhood.†

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IN THE MATTER OF THE JOINT APPLICATION OF THE ALBANY DIVISION OF THE RUTLAND CITIZENS' TELEPHONE COMPANY, OF ALBANY, ATHENS COUNTY, OHIO, AND THE CENTRAL UNION TELEPHONE COMPANY, FOR THE CONSENT AND APPROVAL OF THE COMMISSION FOR A CONNECTING ARRANGEMENT FOR AN INTERCHANGE OF SERVICE BETWEEN THE APPLICANTS.

No. 482.

*Decided April 15, 1913.*

**Mutual Telephone Companies—Physical Connection—Jurisdiction of Commission.**

The Commission dismissed the joint application of the Central Union Telephone Company and The Albany Division of The Rutland Citizens' Telephone Company, for physical connection, for the reason that The Rutland Citizens' Telephone Company had held itself out as a mutual company not operating for profit, and consequently could not invoke the jurisdiction of the Commission.\*

**ORDER.**

It appearing to the Commission that The Albany Division of The Rutland Citizens' Telephone Company, joint applicant herein with the Central Union Telephone Company, has

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†Informal ruling contained in a letter of the Commission, dated April 4, 1913, and issued over the signature of the Secretary of the Commission.—Ed.

\*Editor's headnote.

filed no schedule of rates and charges, has made no annual or other reports to the Commission, nor done any of the things required by law of public service corporations, and it appearing further that said The Albany Division of The Rutland Citizens' Telephone Company has held itself out as a mutual company operating not for profit, the Commission finds that its jurisdiction cannot be invoked by said The Albany Division of The Rutland Citizens' Telephone Company in this action and this case is, therefore, dismissed.

Dated at Columbus, Ohio, this fifteenth day of April, 1913.

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HARRY H. AIKEN, *Complainant*; *vs.* THE CINCINNATI AND SUBURBAN BELL TELEPHONE COMPANY, *Defendant*.

No. 493.

*Decided April 17, 1913.*

**Removal of Telephone Used for Unlawful Purposes.**

A telephone company acts within its rights and in the exercise of its proper discretion in removing a telephone at the demand of the police department and police officers of the city, upon being informed by them that said telephone is being used in furtherance of an unlawful business.

**Re-installation of Telephone.**

It is the duty of the telephone company to re-install such telephone, upon application therefor, if the company is satisfied that no unlawful use thereof will be made, and it is not for the Commission to say what guarantee the company shall demand against further illegal use, unless it shall later appear that the company's demand is unreasonable, nor is the consent of the municipality or of any officer thereof a condition precedent to the restoration of service.\*

*Jos. Sagmeister*, for Complainant.

*J. W. Heintzman*, for Defendant.

**OPINION.**

O. H. HUGHES, *Commissioner*:

For cause of complaint, complainant says:

"That he is a resident of the City of Cincinnati, and within the telephone zone of The Cincinnati & Subur-

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\*Editor's headnote.

ban Bell Telephone Company; that the defendant is a corporation organized under the laws of Ohio, doing a general telephone business, and is classified as a public utility and under the jurisdiction of the Public Service Commission of Ohio; that for three years prior to February 14, he was a subscriber to the telephone service of The Cincinnati & Suburban Bell Telephone Company, and promptly paid the bills rendered by said company for such service, and that on the 13th day of February, the defendant disconnected its telephone service from the residence of the complainant, and refused to accept an application for a renewal of service.

Complainant says that he in no way violated the rules of said company relative to the use of its instrument or any other regulation governing subscribers, and that he is wrongfully deprived of telephone service which the defendant is required under the laws of Ohio to furnish to all bona fide applicants.

*Wherefore*, complainant prays that your Honorable Commission issue an order requiring the defendant to supply him with telephone service upon his compliance with its reasonable rules and regulations, and for such other relief as is just and proper in the premises."

As a justification for the discontinuance and refusal to re-install service, defendant company, answering, says:

"The defendant admits that it is a corporation organized under the laws of Ohio, and is classified as a public utility by the laws of said State; that it is engaged in a general telephone business in the City of Cincinnati and Hamilton County; that the complainant was a subscriber to its service until the same was disconnected as alleged in said complaint.

Defendant says that said service was discontinued upon the request of the Chief of Police of the City of Cincinnati, who represented that the instrument installed for the complainant was being used for an illegal purpose, namely, for conducting a hand-book. Defendant avers, however, that it has no knowledge of the fact and acted solely upon the information of the

lawfully appointed and acting Chief of Police of the City of Cincinnati.

Defendant says that upon receiving said information from the Chief of Police it regarded the action of the complainant a violation of the terms of his contract, and removed said instrument.

Defendant further alleges that it is not required to install or maintain its service for the benefit of any unlawful business, and further avers that if the complainant is not engaged in any unlawful business, and does not use such service for the purpose of furthering any unlawful business, it will restore its service upon approval of the Chief of Police and order of your Honorable Commission."

The evidence discloses that complainant's telephone was located in his residence and that complainant had enjoyed the service thereof for approximately three and one-half years previous to February 13, 1913, the date of its removal. It is not denied that defendant company, in the removal of complainant's telephone and discontinuing his service, acted upon the information furnished it by the Chief of Police of the City of Cincinnati to the effect that complainant was using his telephone as a means of gambling, namely, betting on horse racing, which information was accompanied by the further statement that if defendant company did not remove the telephone and discontinue its service to complainant, the municipal authorities would remove it.

The matter now comes before the Commission upon the application of complainant for reinstallation of service by defendant company and the refusal of defendant to do so without the consent of the municipal authorities. Decisions of courts and commissions were cited by counsel for complainant as controlling in this case; but the citations were mainly as to cases where service was discontinued by reason of violation of certain specific rules of the telephone companies where the violation was an incident to the service, like using profane and indecent language in conversations by telephone, rather than to the primary use of the telephone by the subscriber for illegal purposes, *i. e.*, where the tele-



phone is installed and used for the purpose of violating some specific penal statute.

No sane person would require a telephone to be installed that he might use it simply for swearing or as a means of using abusive language, yet a patron might desire it as a convenient means of violating the law and for no other purpose. In neither event would the fact that the patron had not changed his location be controlling, because wherever located the telephone might be subject to either abuse.

The Commission is of opinion the telephone company was justified in acting upon the advice of the Chief of Police in removing the telephone of complainant until proper investigation could be made. The laws of Ohio provide a penalty against the species of gambling charged against complainant, but the future right to telephone service is no part of the penalty provided.

In the matter of Cullen, 106 N. Y., 250: "The New York police department had ordered a telephone instrument removed from certain premises, on the ground that pools were being sold there; and the telephone company had thereupon refused to reinstate the telephone in these premises for a new applicant without assurance as to his intentions accompanied by references as to his character. This attitude the court held justifiable. The New York Telephone Company had been informed by the police department that the premises had been used as a pool room. It was also aware that a telephone which it had previously installed therein had been removed therefrom by the police. The officers of the company might not reasonably apprehend that they would render themselves liable for aiding and abetting a violation of the law if they furnished further telephone service to the premises in view of this information." Wyman on Public Service Corporations, Sec. 603.

In the opinion of the Commission, defendant company acted within the rights in removing complainant's telephone, and it is not for the Commission to say in the first instance what protection and safeguard defendant shall demand of complainant as a guarantee that its telephone shall not be used for illegal purposes if reinstalled. Defendant company may, when satisfied that its telephone will not be used for

illegal purposes, again install service for complainant under such reasonable conditions as in the judgment of defendant will protect it and its property against illegal use. It is not for this Commission to say what protection defendant company shall demand unless it later appear that its demand is unreasonable. In the first instance, defendant company shall be the sole judge and must be satisfied.

The fact that a subscriber has once used his telephone for illegal purposes is not conclusive against him as to his future right, necessities and requirements, but the right to future service should rest in the sound discretion of the telephone company, the exercise of which discretion is not subject absolutely, as a condition precedent to the establishment of service, to the approval or consent of any municipality or officer thereof.

The Commission is of opinion that the matter of furnishing service to complainant should rest in the sound discretion of defendant company, and be subject to such reasonable rules as it may adopt. An order will be accordingly entered.

The facts disclosed being practically the same in complaint 496, James Flannery *vs.* The Cincinnati and Suburban Bell Telephone Company, and complaint 495, Thomas Flannery *vs.* The Cincinnati and Suburban Bell Telephone Company, like findings and orders are made.

Columbus, Ohio, April 17, 1913.

#### ORDER.

This matter came on to be heard upon the pleadings, the evidence and the exhibits, and was argued by counsel, and the Commission, being fully advised in the premises, finds that the police department and the peace officers of the City of Cincinnati notified the defendant company that complainant was using its telephone service in connection with, and in furtherance of an unlawful business, that is to say, in a certain form of gambling, to wit: the betting on horse races, and directed the defendant company to discontinue said service.

The Commission further finds that defendant company acted within its rights and in the exercise of its proper

discretion in removing its telephone box from the premises and refusing to continue to furnish telephone service to the complainant, upon the demand of the police department and the peace officers of said city.

The Commission further finds that if, and when, the defendant company is satisfied that said complainant does not intend to make any unlawful use of said telephone service, said defendant may, and it is its duty to furnish said complainant with telephone service, upon his application therefor.

This case is, therefore, dismissed.

Dated at Columbus, Ohio, April 17, 1913.

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**IN THE MATTER OF THE APPLICATION OF THE STAR TELEPHONE  
COMPANY, OF ASHLAND, OHIO, FOR CONSENT AND AU-  
THORITY TO ISSUE \$67,500 CAPITAL STOCK DIVIDEND.**

**No. 432.**

*Decided April 17, 1913.*

**Stock Dividend—Depreciation Fund—Additions and Extensions.**

Upon application for authority to issue a stock dividend of \$67,500, the Commission found that this stock was to be distributed in lieu of surplus earnings which had been expended in the construction of additions and extensions. The issuance of capital stock to the amount of \$67,500 was authorized, \$50,000 of which was ordered to be distributed as a stock dividend and the proceeds of the remaining \$17,500 deposited in the applicant's treasury as a depreciation fund, to be thereafter expended for additions and extensions, which should not be subject to future capitalization.\*

**ORDER.**

The Star Telephone Company, a corporation organized under the laws of the State of Ohio, with its principal office and place of business at Ashland, Ohio, having, on the second day of December, 1912, filed its petition praying for the consent and authority of the Commission to issue and distribute, pro rata, to the holders of its outstanding capital stock, as a dividend, instead and in lieu of the surplus earnings of said company which might, otherwise, have been dis-

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\*Editor's headnote.

tributed as dividends but which were, heretofore, expended for the construction of additions, extensions and improvements to its plant and property, its capital stock of the total par value of Sixty-seven Thousand, Five Hundred Dollars, as fully set out in said petition and exhibits attached thereto, and the time for hearing said matter having been fixed for Friday, January tenth, 1913, at two o'clock p. m., and said hearing having, for good cause, been continued to Tuesday, January twenty-first, 1913, at two o'clock p. m., and due notice of the time and place of said hearing having been given, and having been heard on said latter date and the further consideration thereof continued from day to day, the same came on this day for final consideration upon the petition, the evidence and exhibits.

After considering the pleadings, hearing the evidence and examining the exhibits and being fully advised in the premises, and it appearing that said capital stock is to be issued and distributed among the holders of the present outstanding capital stock of said company in lieu of the surplus earnings thereof, which might otherwise have been distributed as dividends, but were expended in the construction of additions and extensions to its plant and property, the Commission is satisfied that so much of the prayer of said petition as seeks its consent and authority for the issue and distribution of Fifty Thousand Dollars, par value, of said capital stock as a dividend, should be granted, and it appearing further that the proceeds arising from the sale of said company's additional capital stock of the par value of Seventeen Thousand, Five Hundred Dollars will be deposited in its treasury as a depreciation fund, the Commission is further satisfied that said company should be authorized to issue and sell such additional capital stock for said purpose. It is, therefore,

*Ordered*, That said The Star Telephone Company, of Ashland, Ohio, be, and it is hereby authorized to issue its capital stock of the par value of Sixty-seven Thousand, Five Hundred Dollars (\$67,500.00), and that, of such capital stock, Seventeen Thousand, Five Hundred Dollars (\$17,500.00) principal amount, be sold for the highest price obtainable

and for not less than the par value thereof, it being the opinion and finding of the Commission that the issue of said capital stock, and the money to be secured from the sale of Seventeen Thousand, Five Hundred Dollars, principal amount thereof, are reasonably required for the proper purposes of said corporation. It is further

*Ordered*, That of said capital stock, said The Star Telephone Company issue and distribute, pro rata, to the holders of its present outstanding capital stock, a stock dividend of the aggregate principal sum of Fifty Thousand Dollars. It is further

*Ordered*, That the proceeds arising from the sale of said capital stock, of the principal amount of Seventeen Thousand, Five Hundred Dollars, be, by said The Star Telephone Company, deposited in its treasury as a depreciation fund. It is further

*Ordered*, That said The Star Telephone Company be, and it is hereby authorized to expend said depreciation fund, or any part thereof, for the purchase of a new switchboard at Ashland, Ohio, and for making additions and extensions to its property and for other proper expenditures for extensions and additions, but that, thereafter, such expenditures, so made, shall not be subject to future or further capitalization. It is further

*Ordered*, That said The Star Telephone Company make verified report to this Commission, as follows: Upon the issue and delivery of said capital stock, of the aggregate principal sum of Fifty Thousand Dollars, the fact of such issue and distribution of said capital stock, setting out in detail, the names of the holders of its present outstanding capital stock, the amount of their holding of said present outstanding capital stock and the amount of said capital stock, of the aggregate principal sum of Fifty Thousand Dollars, received by each as a dividend; upon the sale of said capital stock of the par value of Seventeen Thousand, Five Hundred Dollars, or any part thereof, the fact of such sale, the terms and conditions of sale and the amounts realized therefrom, which shall be the highest price obtainable but which shall not be less than the par value thereof, and of the deposit-

ing of such proceeds in petitioner's treasury, as hereinbefore provided; at the termination of each and every period of six months from the date of this order, the disposition and use made of such fund, so secured, setting forth in reasonable detail the purposes for which such fund is expended, said reports to be made until all of said capital stock has been issued and disposed of, and all of the proceeds from the sale of said capital stock, of the total principal amount of Seventeen Thousand, Five Hundred Dollars, expended pursuant to the terms of this order.

Dated at Columbus, Ohio, this seventeenth day of April, 1913.

## **OKLAHOMA.**

### **Corporation Commission.**

**CHEROKEE RURAL TELEPHONE COMPANY, *Complainant, vs.*  
PIONEER TELEPHONE AND TELEGRAPH COMPANY, *Defendant.***

**No. 508.**

**BYRON MUTUAL TELEPHONE COMPANY, ET AL., *Complainants,*  
*vs.* PIONEER TELEPHONE AND TELEGRAPH COMPANY, *Defendant.***

**No. 627.**

**Order No. 678.\***

*Decided March 21, 1913.*

#### **Complaint of Discrimination between Subscribers on Rural Lines.**

Upon complaints by rural telephone companies against the Pioneer Telephone and Telegraph Company, the issue developed was whether the defendant was discriminating in withholding from subscribers to rural lines residing in towns, the privilege of communicating, without extra charge, over the entire system of rural lines, this privilege being extended to bona fide rural subscribers, i. e., those living beyond town limits.

#### **Protection of Rural Telephone Companies.**

The Commission stated that its policy has been to protect the rural subscriber in the rates and privileges enjoyed by him without extending them to the subscribers of commercial telephone systems. The Commission has also insisted that the service to the rural subscriber shall be rendered at cost. The extension of similar service to the subscribers of commercial telephone systems or to those subscribers to rural lines who reside in towns would ultimately destroy the reciprocal arrangements and mutual benefits now existent. Rural telephones greatly increase the value of the telephones of a commercial exchange. The Commission will carefully avoid laying down any principal which, in its most comprehensive interpretation, might have the effect of finally throwing a burden upon the rural telephone service.

\*This order was modified by Order No. 678a, April 10, 1913, printed at page 728.—Ed.

**Classification of Subscribers—Rural and Semi-Rural Subscribers.**

It was held that all subscribers to rural lines, whether mutual owners or not, who live in towns, should be classified as semi-rural subscribers and a different rule applied to them than to bona fide rural subscribers; that such semi-rural subscribers residing in towns within a radius of fifteen miles, air line, from the defendant's Cherokee exchange, should be connected, without extra charge, with the Cherokee exchange, and with the subscribers of all rural lines switched at the Cherokee central office, and that bona fide rural subscribers should continue to enjoy the privilege of free communication with the subscribers to all rural exchanges connected with the system.

**Contracts between Telephone Companies for Reciprocal Service.**

With respect to certain contracts for reciprocal service upon which the complainants relied, it was held that, although contracts for reciprocal service may not be controlling, they should be considered in connection with all the other facts in the case.

**Cost of Collecting Tolls from Subscribers on Rural Lines.**

With respect to the cost of collecting tolls from subscribers on rural lines, for which the rural companies were held responsible, the Commission suggested that the rural companies should receive from the defendant a sufficient amount to pay the cost of caring for this long distance business and to cover the losses accruing from the failure to collect all tolls.

**Order.**

*Ordered*, That all semi-rural subscribers in towns located within fifteen miles, air line distance, from Cherokee, shall be connected without additional charge with the subscribers of the defendant's Cherokee exchange and with the subscribers of all rural lines switched at the Cherokee central office, and that all Cherokee subscribers, rural or commercial, shall receive like service to all such semi-rural subscribers.

That this reciprocal service shall be required only when the service can be rendered over the clear wires of the rural companies.

That the defendant establish physical connection with all clear wires connecting any rural exchanges located within fifteen miles, air line distance, from Cherokee.

That the defendant shall not be required to connect two rural exchanges through the Cherokee central office without a reasonable charge therefor, not to exceed five cents per message.

That this order shall apply only to semi-rural subscribers and that all bona fide rural subscribers shall continue to receive the service heretofore afforded.\*

**APPEARANCES:**

For the complainants: *A. J. Titus*.

For the defendant: *J. R. Spielman*.

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\*Editor's headnote.



## FINDINGS OF FACT, OPINION AND ORDER.

*By the Commission:*

The first complaint above alleged, in substance, that during the year 1904-05, the complainant and defendant were constructing telephone lines in territory which is now Alfalfa County and adjoining counties; that, to avoid conflict of interests and unnecessary duplication of lines, the defendant entered into contracts with the complainant and other rural telephone companies during the latter part of 1905; that said contract provided, in substance, in consideration of the payment of a switching charge of 25 cents per 'phone per month for each 'phone on the rural lines with a minimum charge of \$1.50 per month and a maximum charge of \$3.00 per month for any one line, the defendant agreed to perform: first, exchange service for complainant's subscribers on rural lines connecting direct with the defendant's exchange at Cherokee; second, unlimited service between complainant's subscribers and defendant's subscribers at Cherokee; third, unlimited service over all lines of other rural companies with which either of said parties may make connection, subject to the provisions of such contract as may be made with the connecting rural companies; that the contract further provided that when the rural lines are connected with other exchanges belonging to the defendant, the said rural party line subscribers as above provided shall have the use of the connecting exchange when the conversation is carried on over the rural lines: and further provided that the defendant shall give the rural subscribers of any other rural company that may be connected with the lines of the complainant, the same privilege without charge whatever; fourth, the defendant agreed that its subscribers within the town of Cherokee should have unlimited free service over all rural lines; fifth, the defendant should give all rural party line subscribers the same toll rates over its lines as are given to the subscribers of the Cherokee exchange; sixth, the complainant should have free service with the exchange of the Union Rural Telephone Company at Ingersoll

over a clear wire to be built and maintained by the rural telephone company.

It appears from the evidence in the case that upon the building of the clear wire between Lambert and Cherokee, the defendant first charged the minimum fee of \$3.00 per month, but this fee was advanced to \$5.00 per month, which is now being paid by the companies.

The defendant contends: first, that the contract provides for free service for rural party line subscribers only and that it was not intended to include a rural subscriber residing in one town talking free with another rural or regular subscriber residing in another town; second, that all messages from town to town are strictly long distance or toll messages and that the defendant has a right to route such messages over its toll lines instead of the clear wire mentioned in the contract, and that it has a right to collect the toll fee of 15 cents per message therefor; third, that the defendant's toll lines would be worthless as to local service if any other construction were placed upon the contentions in this case.

The arrangements under which the defendant and the various rural or mutual companies have done business, as set forth in the contract introduced in the record, show what the parties had agreed was a reasonable arrangement as least as to the time the contract was to run, which was a period of five years from May, 1906. Contracts for reciprocal service between telephone companies may not be controlling, but should certainly be considered in connection with all the other facts in the case.

We understand from the evidence in this case that the defendant is willing to continue the service as to those subscribers which it terms rural subscribers in fact. Under the present arrangements, a rural subscriber whose line is connected with the exchange at Byron can talk from Byron to any subscriber in Cherokee or any rural subscriber whose line is connected with the Cherokee exchange, and may also secure connection at Cherokee and talk over a clear wire to Lambert, to any rural or other subscriber in the town of Lambert, which service is so extended that possibly more

than 1,000 farmers or rural subscribers can talk without charge throughout the entire county and even up into Kansas. The subscribers, including the business men, in the town of Lambert, may also talk to any rural subscriber at Byron, Driftwood, or any of the other rural exchanges which have connection directly or indirectly by rural line with the exchange of the defendant at Cherokee.

The distinction which the defendant draws is that it is unjust to it for the business men of Lambert to talk over the clear wires of the rural telephone companies to Byron or other rural exchanges to the business men of other towns. The defendant contends that the subscribers in Cherokee should not be permitted to talk over the clear wires of the rural exchanges to subscribers of such exchanges residing in town without paying a toll charge of 15 cents.

To sustain the contention of the rural telephone companies would make it possible for a subscriber, either a business man or otherwise, at Cherokee, to talk, by means of this rural system, all over the entire county and to exchanges located in Kansas without any charge whatever, other than the monthly rentals.

This case is not for the determination of what are reasonable rates, but the question before the Commission for consideration is whether the defendant is discriminating in refusing to permit the merchants and other subscribers who reside in the town of Byron and other rural telephone towns to have continuous service through the various exchanges described above when such privileges are extended to what the defendant terms the bona fide rural subscriber. Hence, the question resolves itself into what is a rural subscriber and what class of service, if any, should be extended to such subscribers which could be withheld from other subscribers without a discrimination.

This question has been before the Commission in various forms several times, and it has been the policy of the Commission to protect the rural telephone subscriber in the rates and privileges he now enjoys without extending this service to the subscribers of a commercial telephone company in a town. To require the rates for rural telephone

service to be extended to the subscribers of commercial telephone systems would have the effect ultimately of destroying the reciprocal arrangements and mutual benefits that now accrue to the real rural telephone subscriber. The Commission has insisted that the service to the rural subscriber should be rendered at cost. The telephone companies filed a general petition with the Commission asking that it authorize the various exchanges throughout the State to increase the switching charge of rural telephones from 25 to 35 cents per month. The Commission declined to hear this complaint as a general complaint, but ruled that a complaint must be filed in each specific instance where it was desired to raise the rates, and up to this time no such complaints have been filed.

The railroad companies are required to haul sand and gravel and other low grade commodities at the lowest possible rate, hence, upon this theory, the Commission refused to increase rural telephone rates because they so greatly increase the value of the telephones of the commercial exchange, both business and residence. In many communities the rural system has reached that degree of efficiency where a business man or a subscriber in a city or town can talk to most all farmers throughout the locality. Hence, the Commission has been and will be very careful in its rulings not to lay down any principle which with its most comprehensive interpretation may have the effect to finally throw a burden upon the rural telephone service or exchange.

In the case of George Carlyle of Maramac vs. Quay Rural Telephone Company,\* page 329, Commission's report 1909-10, the complainant, who resided in a town where there was a commercial exchange operated, insisted that he had a right to connect his telephone to a rural line coming into the switchboard within the town. The defendant refused this request and the complainant constructed a line from his place of business beyond the corporate limits and connected it with the rural line. The service of the rural line was discontinued and the complaint was filed. The Commission said:

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\*See II Commission Telephone Cases, 775.

"Rural service is maintained and switched at an exchange at a nominal price largely for the benefit of the subscribers, business men and doctors in the city limits, and if the exchange subscribers were permitted to run their lines without the city limits and connect with rural lines, this would reduce the exchange to a rural service proposition and would destroy the efficiency of the exchange.

"If, under the franchise granted to the defendant, or reasonable rules and regulations prescribed by the defendant, the subscribers within the city limits could not connect with rural lines, then the running of a line from a residence or business house to the outside of the city limits, and there connecting with the rural line would not change the status, and the subscriber would have no more right to connect in this way than directly within the city. It cannot be insisted that it is a discrimination to allow the farmers to run a line to a switchboard containing a number of rural subscribers and not allow people living within a certain distance of the exchange to connect with this line. The circumstances are different. The rural line is operated with several subscribers and performs a different class of service and serves a different purpose, to a great extent, than the operation of an exchange in town."

The complaint was dismissed.

In the towns of Byron, Capron, Driftwood and Burlington are operated exchanges by the rural telephone companies, that is, companies are organized and rural lines are built in various directions and all center at one place where an exchange is operated. In addition to switching all the rural lines at this exchange, commercial telephones are placed in residences and business houses, and, as we understand, the subscriber has an option of paying so much per telephone or taking stock in the company and becoming one of the mutual owners thereof, when he receives his telephone for the same rental as other mutual owners. The rate varies somewhat in the different rural exchanges, ranging from \$1.00 to \$1.50 for residence and \$2.00 for business telephones, and the question here is what is the status of these subscribers in the town, whether they own stock in the company

and are classed and treated as other rural subscribers or as those to whom the telephones are rented direct.

The Commission finds that all subscribers living in towns, whether mutual owners or not, should be classed as semi-rural subscribers, and that a different rule may be applied to this class of subscribers than the one which is usually applied to the bona fide rural subscriber. These towns range in population from 125 to 250. There is not a sufficient number of people to maintain a regular and exclusive commercial telephone exchange in any of them. Hence, these exchanges must be built and operated by the rural lines, and in establishing them it has always been the custom of the rural or mutual telephone companies to give service to all parties living in close proximity to the switchboard at so much per month per 'phone.

The question to be determined here is, can the Commission lay down a rule putting this class of subscribers, as many as forty of whom are in some of these towns, on the same basis in all particulars as the regular rural subscriber. We think not. The system may grow top heavy and ultimately result in an increased burden on the rural telephone subscriber. It is our opinion that the service should be extended by the defendant to those we have herein termed semi-rural telephone subscribers, within a radius of fifteen miles, air line, from its exchange at Cherokee. That is, the subscribers at Byron, Driftwood and Burlington may talk to Cherokee or with any of the rural subscribers, but cannot go through the Cherokee exchange and talk to the subscribers of any other exchange. This does not change the rule as to the rural subscribers who may continue, as now, to talk to subscribers of all exchanges.

The Commission is not passing upon the rates for service in this case, but deciding a question of discrimination. We appreciate that our views in this case establish a new precedent and make a new classification in telephone subscribers, and may not meet with the views of either the complainants or the defendant. We feel, however, that a subscriber in Cherokee who pays \$2.50 for a business telephone without the privilege of talking to the rural subscribers of the various

exchanges within fifteen miles of Cherokee receives a very small amount of service, comparatively speaking, for the consideration paid. A subscriber at Byron who pays \$2.00 for a rural telephone, with a ground wire system, without the privilege of the service, at least to Cherokee and the rural exchanges, receives a nominal amount of service for the rental paid.

We herewith submit a blue print showing the connections with the various rural exchanges, which, if the service were not limited in some way, clearly shows the extent to which the system insisted upon by the complainants could be carried, and with the limitations herein prescribed all parties can talk within reasonable distances. It is not intended by the order, which will hereinafter be made, to interrupt any service between any of the rural telephone exchanges which is now in force, but this order applies only to the Pioneer Telephone & Telegraph Company at Cherokee and the service it shall perform with reference to this rural line system.

By the reciprocal arrangements, the rural exchanges coming into an exchange like Cherokee on clear wires afford the Pioneer Telephone Company an opportunity to have direct connection with from fifteen to twenty-five hundred rural and other subscribers for long distance business, both in Oklahoma and Kansas. When it is considered that the Pioneer has virtually the entire long distance business of the State this is a very important consideration.

In this connection a controversy has grown up as to how much rural lines should charge the Pioneer Telephone Company for collecting the revenue accruing from long distance messages. The rural subscriber, under this arrangement, would have a right to telephone into the Cherokee central and direct his long distance call. This would not be satisfactory to the Pioneer, inasmuch as it would have no one to collect the charges and would probably not be acquainted with the party putting in the call. Hence, it must arrange with the rural telephone companies to place the long distance calls and to hold them responsible for the collection of the revenues. For the collection of such revenues, the Pioneer has been paying 10 per cent. The evidence on this

question was not brought out clearly and the Commission will make no order on the same, but suggests that rural companies should have at least a sufficient amount to pay for the cost of caring for this long distance business, and to remunerate them for such losses as they will sustain during the year for failure to collect all tolls of this character. If an amicable adjustment cannot be reached between the parties as to what commissions should be paid, complaint may be filed upon that question alone.

*It is therefore ordered*, That the defendant, the Pioneer Telephone & Telegraph Company shall, without additional charge, permit the semi-rural telephone subscribers (as defined in the opinion in this case) of all rural telephone exchanges located within fifteen miles, air line distance, of Cherokee, to talk to all of the subscribers of the defendant's exchange in the town of Cherokee, and to the subscribers of all rural lines switched at the central office in Cherokee, and permit all subscribers at Cherokee, rural or commercial, to talk to the subscribers of all rural exchanges subject to the above rule. This reciprocal service shall only be required of the defendant when the same can be done over the clear wires of the rural companies. The defendant is ordered to make physical connection with all clear wires connecting any rural exchanges within fifteen miles, air line, from Cherokee.

The defendant by this order is not required to connect two rural telephone exchanges through the Cherokee central office without a reasonable charge therefor not to exceed 5 cents per message. The arrangement as to all rural subscribers as heretofore operated shall be continued, and the order herein shall only apply to what are termed semi-rural subscribers. This order shall be in full force and effect on and after April 4, 1913.

Oklahoma City, March 21st, 1913.



**CHEROKEE RURAL TELEPHONE COMPANY, *Complainant*, vs.  
PIONEER TELEPHONE AND TELEGRAPH COMPANY, *Defendant*.**

**No. 508.**

**BYRON MUTUAL TELEPHONE COMPANY, ET AL., *Complainants*,  
vs. PIONEER TELEPHONE AND TELEGRAPH COMPANY, *Defendant*.**

**No. 627.**

**Order No. 678a.**

*Decided April 10, 1913.*

**Rural Telephone Exchanges—Rural and Semi-rural Subscribers  
—Switching Charges—Commission for Handling Long  
Distance Business.**

Order No. 678\* was modified so as to indicate that the classification of subscribers into rural and semi-rural subscribers, established thereby, is intended to apply only to telephone exchanges not operated for profit, and that it is not intended that the service given thereunder shall be rendered without any charge whatever but merely without any charge in addition to the regular switching charge. The Commission refused to increase the charge of five cents per message, fixed by Order No. 678, for connecting two rural exchanges through the defendant's Cherokee exchange, holding that this charge is equivalent to twenty or twenty-five per cent. of the in and out business, whereas the defendant itself allows local exchanges only ten or fifteen per cent. of the in and out business for a similar service.†

**APPEARANCES:**

For the complainants: *A. J. Titus.*

For the defendant: *S. H. Harris and J. R. Spielman.*

**OPINION AND ORDER.**

*By the Commission:*

Order No. 678\* was promulgated in this case on the 21st day of March, 1913. The defendant filed a motion with the Commission, and among other objections to the order, it appeared from the record that defendant had been given per-

\*Printed at page 718.—Ed.

†Editor's headnote.

mission to introduce some additional testimony and no opportunity had been given for it to do so. The order was set aside and additional testimony was introduced by the defendant.

The evidence tended to show that this order would greatly interfere with the Pioneer Telephone Company's long distance business. It could not have the effect of reducing the defendant's long distance business to the extent claimed in the evidence. The principle only applies to rural telephone exchanges in towns of 250 population or less. That is, if a telephone exchange were operated in towns on a purely commercial basis, the rule would not apply, but only means to apply and does apply to those telephone exchanges and rural systems that are maintained and operated without profit.

The question as to what may be a reasonable switching charge for a clear wire is not in this case, and all the Commission meant to say by its order is that semi-rural subscribers and those local subscribers in the rural exchanges, such as described in the order, shall be switched on this clear wire without any additional charge other than is charged for the clear wire, which charge is not intended to be fixed in this order.

It is claimed in the evidence that the 5-cent charge per message for switching clear wires connecting two rural exchanges through the exchange at Cherokee would only be sufficient to pay for the bookkeeping and collecting the charge, and would give the Pioneer Company insufficient compensation for the service. The charge could be made against the rural telephone exchange and the entire bill presented at the end of the month. The Pioneer Company insists that 10 or 15 per cent. of the in and out business is sufficient compensation for a local exchange to handle long distance business and that is the commission it usually allows when there is no interference by the Commission. The average long distance message for a small exchange usually amounts to from 25 cents to 30 cents. If 10 per cent. commission is allowed, the exchange will get 3 cents for the use of its facilities, that is, its exchange and its local wires in a town,

and must keep a separate account of each call and collect the same from various subscribers. In a great many instances it must make a separate collection for each call. On many calls it only receives 1 and  $\frac{1}{2}$  cents at 10 per cent. commission, and where 15 per cent. is allowed, its average commission per call would probably not exceed 4 cents for the individual or separate bookkeeping and the use of its exchange and local facilities in the town. Five cents for a switching charge is equal to 20 or 25 per cent. of the in and out business.

The following order will be re-issued which will contain the modification above suggested.

*It is, therefore, ordered,* That the defendant, the Pioneer Telephone & Telegraph Company, shall, without additional charge other than is charged for the switching of the clear wire, permit the semi-rural telephone subscribers (as defined in opinion preceding Order No. 678) of all rural telephone exchanges located within fifteen miles, air line distance, of Cherokee, to talk to all of the subscribers of the defendant's exchange in the town of Cherokee, and to the subscribers of all rural lines switched at the central office in Cherokee, and permit all subscribers at Cherokee, rural or commercial, to talk to the subscribers of all rural exchanges subject to the above rule. This reciprocal service shall only be required of the defendant when the same can be done over the clear wires of the rural companies. The defendant is ordered to make physical connection with all clear wires connecting any rural exchanges within fifteen miles, air line, from Cherokee. By rural telephone exchange is meant a telephone exchange that is not operated for profit.

The defendant by this order is not required to connect two rural telephone exchanges through the Cherokee central office without a reasonable charge therefor not to exceed 5 cents per message. The arrangement as to all rural subscribers as heretofore operated shall be continued and the order herein shall only apply to what are termed semi-rural subscribers. This order shall be in full force and effect on and after April 22nd, 1913.

Oklahoma City, April 10th, 1913.

F. E. CRESSLER, ET AL., OKEENE, OKLAHOMA, *Complainants,*  
*vs.* CENTRAL OKLAHOMA TELEPHONE COMPANY, *De-*  
*fendant.*

Cause No. 1745—Order No. 682.

*Decided March 25, 1913.*

### Physical Connection—Long Distance Service.

Upon complaint against the Central Oklahoma Telephone Company, asking for physical connection and long distance service at Okeene, it appeared that all except two or three of the telephones installed in Okeene were those of the Mutual Telephone Company, whereas the long distance lines running out of Okeene belonged to the Central Oklahoma Telephone Company.

*Ordered,* That the Central Oklahoma Telephone Company establish physical connection with the lines of the Mutual Telephone Company at Okeene and maintain good service therewith.\*

### OPINION AND ORDER.

#### *By the Commission:*

F. E. Cressler and others filed complaint with the Commission against the Central Oklahoma Telephone Company, asking for physical connection and long distance service.

The evidence shows there are two telephone exchanges in Okeene, one the Central Oklahoma Telephone Company and the other the Mutual Telephone Company. The evidence shows that the Central Oklahoma Telephone Company has long distance lines running out and connecting with several other long distance lines, but has no 'phones in or near Okeene except two or three that are not paying any revenue, while the Mutual Telephone Company has 'phones in most all the business houses and residences in the town and country residences around Okeene. The evidence further shows that the people in Okeene had to keep a 'phone in town to talk to their friends and farms in the country and did not want to keep two 'phones at one time, therefore, ordered the Central Oklahoma 'phones out and now want connection from the Mutual Telephone Company with the Central Telephone Company and long distance lines, so they

\*Editor's headnote.

can talk from their places of business and residence to any part of the State that has connections.

*It is therefore, ordered, by the Corporation Commission of Oklahoma, That the Central Oklahoma Telephone Company of Okeene, Oklahoma, give physical connection with the Mutual Telephone Company at Okeene and maintain the same with good service and if the two telephone companies at Okeene cannot agree upon the rates to charge each other, they can ask the Corporation Commission to fix their rates. This order to take effect on and after April 5th, 1913.*

Dated at Oklahoma City, Oklahoma, this 25th day of March, 1913.

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F. E. CLAYTON, ET AL., CHICKASHA, OKLAHOMA, *Complainants, vs. PIONEER TELEPHONE AND TELEGRAPH COMPANY, Defendant.*

Cause No. 1603—Order No. 686.\*

*Decided March 25, 1913.*

### Discrimination—Zone System.

Upon complaint alleging discrimination in the rates charged for telephone service in Chickasha, the defendant answered that the alleged discrimination was due to the fact that Chickasha had been divided into zones and the rates fixed accordingly.

The Commission held that zones should not affect the making of rates for an exchange and that the same rates should be charged for residence and business telephones, respectively, throughout the city; and ordered the Pioneer Telephone and Telegraph Company to charge certain specified rates.†

### OPINION AND ORDER.

*By the Commission:*

F. E. Clayton and others of Chickasha, Okla., filed complaint against the Pioneer Telephone & Telegraph Company, charging discrimination in telephone rates in Chickasha.

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\*This order was amended by Order No. 693, April 4, 1912, printed at page 733.—Ed.

†Editor's headnote.

The Commission took evidence in this complaint which showed that some of the citizens of Chickasha were paying \$1.00 for residence 'phones and some were paying \$1.50 and some \$1.75, all for the same service in the City of Chickasha. The Pioneer Telephone & Telegraph Company gave as a reason for the discrimination in the rates, that they have Chickasha divided into zones and the rates made according to the zones.

The Commission believes that the zones should cut no figure in making rates at an exchange and the rates should be the same for residence 'phones to any part of the city; also for business and office 'phones.

*It is therefore ordered by the Corporation Commission of the State of Oklahoma, That the Pioneer Telephone & Telegraph Company make their rates \$1.50 for residence 'phones in Chickasha and \$2.50 for business 'phones per month, and where there are two or more parties on the same line they shall each pay \$1.00 per month for a residence 'phone.*

This order to take effect on and after April 5th, 1913.

Dated at Oklahoma City, Oklahoma, this the 25th day of March, 1913.

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F. E. CLAYTON, ET AL., CHICKASHA, OKLAHOMA, *Complainants, vs. PIONEER TELEPHONE AND TELEGRAPH COMPANY, Defendant.*

Cause No. 1603—Order No. 693.

*Decided April 4, 1913.*

**Combination Business and Residence Rate—Effective Date of New Rates.**

Upon the defendant's application for a modification of the order\* issued in this case on March 25, 1913, the question was whether the defendant should charge \$1.50 per month for a residence telephone where the subscriber was not also a subscriber for a business telephone and \$1.00 per month where a business telephone was also subscribed for.

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\*Printed at page 732.—Ed.

The Commission ordered the defendant to charge \$1.50 per month for a direct line residence telephone in Chickasha regardless of whether or not a business telephone was also subscribed for.

Since it appeared impracticable for the Commission's order to take effect at any time other than the first of the month, the effective date of the order was postponed from April 5, 1913, to May 1, 1913.\*

### OPINION AND ORDER.

Now on this 1st day of April, 1913, this matter comes further on for hearing upon the motion and application of the defendant for a modification of the opinion and order† issued herein on the 25th day of March, 1913, and it appearing to the Commission that the defendant, Pioneer Telephone & Telegraph Company will voluntarily discontinue what are termed zone rate charges in Chickasha until otherwise ordered by the Commission, and that the sole question involved in this case is the charging by the defendant of a rate of \$1.50 per month for residence telephones where the subscriber is not also a subscriber for a business telephone, and a rate of \$1.00 for such residence telephone where the subscriber is also a subscriber for a business telephone; and, it further appearing that it is impracticable for the order of the Commission to take effect at any time other than the first of the month, the opinion and order of the Commission issued March 25th, 1913, is hereby amended to read as follows:

"Until otherwise ordered by the Commission, the Pioneer Telephone & Telegraph Company, defendant, is ordered and directed to charge all subscribers in the City of Chickasha \$1.50 per month for a direct line residence telephone regardless of whether such subscriber is also a subscriber for a business telephone.

This order shall take effect on the 1st day of May, 1913, and all collections for the month of May and thereafter, until otherwise ordered by the Commission, shall be made in accordance herewith."

Dated at Oklahoma City, this 4th day of April, 1913.

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\*Editor's headnote.

†Printed at page 732.—Ed.

PRAGUE TELEPHONE COMPANY BY P. W. BALLINGER, OWNER,  
*Petitioner, vs. WILLZETTA TELEPHONE COMPANY, Re-*  
*spondent.*

Cause No. 1620—Order No. 687.

*Decided March 26, 1913.*

**Physical Connection—Protection of Rural Lines—Charges for  
Switching Service—Jurisdiction over Mutual  
Telephone Companies.**

Upon petitions asking the Commission to issue an order requiring physical connection between the petitioner's lines and those of two mutual telephone companies and also fixing rates for the switching service, it appeared that the respondent telephone companies demanded free switching service from the petitioner, despite the fact that such service was being rendered by the petitioner at a loss.

*Held:* That although the rural telephone business is an absolute necessity and must be protected and maintained without loss, if possible, and without profit, nevertheless other companies from which services are required by rural lines must be sufficiently reimbursed for such services;

That an agreement by the petitioner to furnish free switching service would not justify the continuance of such service after its actual operation had resulted in a deficit;

That the Commission has no jurisdiction over the respondent companies inasmuch as they are mutual companies;

That the petitioner is entitled to a reasonable fee for switching service rendered to rural lines, and that the usual charge for furnishing such service is 25 cents per station or a maximum charge of \$5.00 for any line with not more than twenty subscribers.

Petition dismissed without prejudice.\*

**OPINION AND ORDER.**

*By the Commission:*

The petitioner, P. W. Ballinger, represents that he is the owner and manager of the Prague Telephone Exchange and that the same is owned and operated for him as a town exchange under certain franchise rights in the incorporated town of Prague, Lincoln County, State of Oklahoma.

The respondent is a mutual telephone company owning and operating a rural telephone system in Lincoln County, State of Oklahoma, with its exchange at Willzetta in said

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\*Editor's headnote.



County. The case was called and evidence heard on August 13th, 1912, and the case closed.

There being two cases filed at the same time—one against the Willzetta Telephone Company and one against the Arlington Telephone Company, the facts in both cases being of the same nature, it was ordered that the two cases be heard at the same time.

The petitioner asks that the Commission issue an order requiring physical connection and fix rates for switching service rendered said companies.

The evidence shows that there are 150 operating telephones in actual service in the Prague Telephone Exchange and 144 in the Willzetta Telephone Company and at this time the petitioner is only receiving for switching service \$1.50 per month.

The petitioner testifies that he has kept a record of the actual time and expense of the switching service for a period of three days and taking this as an average for one month shows a loss to him at the price he has been giving said service.

It appears that Willzetta Company as well as the Arlington Company are both mutual companies demanding service from the Prague Exchange, that which they are not in position to give in return, expecting a company that has put into the business, according to the evidence, approximately \$5,000.00, to give the service required and asking that free service be given over their lines, although it be done at a loss.

It is an evident fact that the rural telephone business, in pace with modern times, is an absolute necessity, and must be protected and maintained without loss, if possible, and without revenue profit; but if it be necessary to co-operate with any other company to give the service necessary and required by its patrons, they must pay for said service a sum sufficient to said company that will be remunerative for the service required.

The fact that the petitioner agreed to furnish free connection on certain conditions would not be a sufficient reason for the continuation of such service after same had been

tested out and showed a deficit for the actual service rendered.

The Commission is of the opinion that the Willzetta and Arlington Telephone Companies are mutual telephone companies and as such do not come under the jurisdiction of the Corporation Commission. The Prague Telephone Company does come under the jurisdiction of the Commission and has a right to make a reasonable charge for performing switching service for rural telephone lines, and the usual charge for such service is on a basis of twenty-five (25c.) cents per station or a maximum charge of \$5.00 for any one line of not more than 20 subscribers.

*It is, therefore, ordered,* That this complaint be dismissed without prejudice.

Dated at Oklahoma City, Oklahoma, this 26th day of March, 1913.

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TO ALL RAILROADS AND RAILWAYS OPERATING STEAM, ELECTRIC OR GASOLINE TRAINS OR CARS IN THE STATE OF OKLAHOMA; TO ALL EXPRESS, TELEPHONE AND TELEGRAPH AND SLEEPING CAR COMPANIES; TO ALL GAS AND ELECTRIC LIGHT, HEAT AND POWER COMPANIES, AND TO ALL OTHER PUBLIC SERVICE CORPORATIONS AND TO WHOM IT MAY CONCERN:

Cause No. 1561—Order No. 689.

*Dated March 27, 1913.*

#### **Filing of Contracts.**

*Ordered,* That all public service corporations under the supervision of the Corporation Commission shall file with the Commission duplicate copies of all contracts, leases, agreements or arrangements with other persons or companies, except ordinary service contracts, the rates for which are specified in tariffs filed with the Commission,—provided that a sample form of each kind of such service contracts shall be filed with the Commission.

*Ordered, further,* That the Commission shall be furnished upon request with the original copy or copies of any contract, and shall be notified, by the parties over whom the Commission has jurisdiction, whenever any contract is terminated or changed.\*

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\*Editor's headnote.

## ORDER.

Pursuant to publication of Proposed Order No. 106, as required by law, and hearing had thereon in the office of the Corporation Commission on the 9th day of April, 1913, you are hereby notified that on and after the 21st day of April, 1913, a date after publication once a week for four consecutive weeks, in the Daily Oklahoman, a newspaper of general circulation, published in the City of Oklahoma City, Oklahoma County, Oklahoma, as required by law that the following order, rule, regulation and requirement will be in full force and effect.

Each and every railroad or railway, operating steam, electric or gasoline trains or cars in the State of Oklahoma, all express, telephone and telegraph companies, oil pipe line companies, sleeping car companies, all gas or electric light, heat or power companies, and all other public service corporations coming under the supervision of the Corporation Commission of Oklahoma, are hereby required to file with the Commission true and complete duplicate copies of all contracts, leases, agreements or arrangements with other persons or companies now in effect, and such as may hereafter be entered into, as soon as practicable after execution, affecting the carriage or transportation of persons or property, or relating to the transmission of messages or communications between points within the State of Oklahoma, or to the handling, use or rental of lines, equipment or facilities; provided that this shall not include ordinary contracts or bills of lading or passenger tickets, the rate or charge for which is specified in tariffs filed with the Commission; provided, however, that a sample of each kind of railroad, railway or express company way bill, ticket or bill of lading will be kept on file, same to represent a particular class or form of ticket or way bill; and further provided that a sample form of each kind of telephone contract or gas or electric meter contract is filed with the Commission to represent that particular class of contract. Provided further that the Commission will be furnished upon its request any original copy or copies of any contract, lease, agreement or arrangement that it may require.

When any contract shall be terminated from any cause whatsoever, or shall in any manner be changed, the parties thereto over whom the Corporation Commission has jurisdiction shall notify the Commission by letter of all such changes or terminations.

Dated at Oklahoma City, Oklahoma, this 27th day of March, 1913.

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**FT. SUPPLY TELEPHONE AND TELEGRAPH COMPANY, Complainant, vs. THE HOME ENTERPRISE TELEPHONE COMPANY AND THE PIONEER TELEPHONE AND TELEGRAPH COMPANY, Defendants.**

Cause No. 1748—Order No. 696.

*Decided April 11, 1913.*

### **Inter-Company Relations and Business.**

The telephone companies parties in this case agreed to the order of the Commission which provided, among other things, for joint agencies, routing of business, division of business, division of toll revenue on an air line basis, commission for acting as agent, treatment of rural and farmer line subscribers as local subscribers, messenger fees, and settlement of inter-company accounts.\*

### **ORDER.**

*By the Commission:*

On this, the 8th day of April, 1913, the above styled cause came on for hearing and thereupon came the complainant by *Iedbetter, Stuart & Bell*, and the defendants by *S. H. Harris*, and thereupon, in open court, and before the Commission, it was stipulated and agreed that the following order and judgment may be rendered.

**FIRST: It is hereby ordered, adjudged and decreed, That subject to the provisions hereinafter contained in this Order, the Pioneer Telephone & Telegraph Company act as the agent of the Ft. Supply Telephone & Telegraph Company at Woodward and May, Oklahoma; and the Ft. Supply Telephone &**

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\*Editor's headnote.

Telegraph Company act as the agent of the Pioneer Company at Supply.

**SECOND:** Each of said companies shall have the right to route its own business from its own exchanges.

**THIRD:** The Ft. Supply Company shall act as agent of the Pioneer Company at Laverne on all business originating at Woodward or at points other than those on the Wichita Falls & Northwestern Railroad northwest from Woodward.

**FOURTH:** That the toll rates and division of tolls between the two companies on all inter-company business, that is, business passing over portions of the lines of the two companies between point of origin and point of destination, shall be based upon air line distance between the point of origin and point of destination according to the Pioneer methods of determining toll rates now on file with the Commission, and divided upon the basis of air line distance between point of origin and point of junction of the lines of the two companies and air line distance from such junction to point of destination and without any other commissions or compensation to either company. The operating rules governing the handling of business of the initiating company on such inter-company business shall govern with reference to such business.

**FIFTH:** Where either company acts as the agent of the other company the rate of commission shall be 25 per cent. on all in and out local business.

**SIXTH:** It is further understood and agreed that in case the lines of either company are out of repair, and it is necessary to use the lines of the other company, the business shall be considered as belonging to the company over whose lines the same is handled.

**SEVENTH:** It is understood and agreed by all parties hereto that all rural or farmer line subscribers adjacent to and connecting with any of the exchanges of the other company shall be considered and handled the same as local subscribers to said exchanges so far as connection or service to or from the toll lines or connecting toll lines of the other company is concerned, and the regular toll rates furnished by the other company shall apply to all such rural and farmer

line subscribers connecting with exchanges of the companies hereto.

**EIGHTH :** A messenger fee of ten cents will be allowed either company where the party called has no telephone, and can be reached within the corporate limits of the city or town in which either company is located. When the party called cannot be reached within the corporate limits of the city or town, then a reasonable messenger fee will be paid, should it be necessary to send a messenger beyond the corporate limits, but in all cases, the party calling should approve the charge to be made.

**NINTH :** The Pioneer Company shall make statements and remittance to the Supply Company at Supply, Oklahoma, on the fifth of each month for the month next preceding, on all business originating or terminating at the exchanges of the Pioneer Company.

**TENTH :** The Supply Company shall make statements and remittance to the Pioneer Company at Oklahoma City, Oklahoma, on the fifth of each month for the month next preceding, on all business originating or terminating at points on the line of the Supply Company, on business over Pioneer Lines.

This order and decree shall remain in force until further order of the Commission.

Dated at Oklahoma City, Oklahoma, this 11th day of April, 1913.

## **SOUTH DAKOTA.**

### **Board of Railroad Commissioners.**

#### **RESOLUTION.**

*Dated March 27, 1913.*

#### **Filing of Inventory of Toll Equipment. [Ed.]**

*Be it resolved* by the Board of Railroad Commissioners of the State of South Dakota that each of the Telephone Companies engaged in any manner in conducting a telephone toll or long distance business in the State of South Dakota be and hereby is required and commanded to file in the office of the Board of Railroad Commissioners of the State of South Dakota within forty days from the date hereof a full and complete, detailed, itemized inventory and appraisalment of all of its long distance or toll equipment, including the portion thereof included within or a part of any telephone exchange or station and all long distance telephone toll stations and also a map or maps or plats showing the location of the said long distance telephone toll plant and equipment.

Done at Pierre, the Capital, at the office of the Board of Railroad Commissioners in regular session on this 27th day of March, 1913.

# TENNESSEE.

## Railroad Commission.

### ORDER.

*Dated April 12, 1913.*

#### Filing of Rate Schedules. [Ed.]

WHEREAS, The Legislature passed an Act March 26, 1913, conferring on the Railroad Commission authority to regulate and control express, telephone and telegraph companies, with power to make and enforce rules and regulations by which such companies shall be governed in the conduct of such business:

*It is ordered* that each express, telephone and telegraph company, and each person, firm or corporation owning and conducting an express business, or operating telegraph or telephone lines, stations or exchanges in this State for transmission of intelligence for hire, shall, within thirty days from date, file with the Tennessee Railroad Commission, at its office in Nashville, Tennessee, a complete schedule of the Interstate rates charged for such service, and the Interstate rates as they affect patrons in Tennessee, together with copies of the rules and regulations relating to the conduct of such business in this State.

*It is further ordered*, that the Secretary of this Commission immediately transmit by mail, a copy of this order to the General Manager of each of said companies now doing business in this State, and to each individual or firm engaged in such business, and that in conjunction with the entry of this order on the minutes, the Secretary shall enter the name of each company, individual and firm so notified together with the date of mailing the notice.

The Daily newspapers are requested to publish this notice.

Dated April 12th, 1913.



## **WISCONSIN.**

### **Railroad Commission.**

#### **IN THE MATTER OF THE APPLICATION OF THE PEOPLE'S TELEPHONE COMPANY FOR AUTHORITY TO INCREASE RATES.**

#### **Decision U—451.**

*Decided March 11, 1913.*

#### **Increase of Rates—Inadequate Return—Limitation of Free Service.**

Upon application asking that the applicant's rates be revised so as to provide an adequate return, it appeared that the applicant operated six exchanges, several rural lines and a toll system; that the extent of the free service afforded the various exchanges was not uniform; and that each of the rural lines was given free service throughout one exchange in addition to that with which it was connected. The applicant proposed to discontinue the free service afforded between two of its exchanges and to consolidate two others. The schedule of rates proposed by the applicant retained the existing rate for rural lines but provided that the free service should be limited to the exchange with which a line is connected.

The Commission approved the proposed changes in service, holding that, although it is permissible to furnish free service between exchanges, there is no obligation upon the utility to do so; that free service between the two exchanges in question did not seem advisable or entirely equitable with respect to the other exchanges; and that the proposed consolidation of a small exchange with a larger would conduce to greater efficiency.

#### **Valuation of Property—Reproduction Cost—Present Value—Depreciation—Interest—Comparison with Operating Expenses of Similarly Situated Companies.**

For the purpose of determining what rates would provide an adequate return, the Commission adopted a valuation of the applicant's property made by the Commission in 1911, and added thereto the cost of the reported extensions since that date. The valuation included the reproduction cost new and the present value of the property. Finding that the applicant's annual operating expenses, including taxes, but exclusive of depreciation and interest, slightly exceeded ten dollars per telephone and that this amount was rather high as compared with the expenses of similarly situated companies, the Commission held that this fact must be considered in fixing a schedule of rates. The Commission computed depreciation at 6.5 per cent. upon the reproduction cost new and interest at 7 per cent. upon the present value, and found that the sum of these allowances exceeded by about \$3,000 the

amount available therefor during the past year. Rates substantially in accordance with those proposed by the applicant were adopted by the Commission.

### **Relation of Rates for Various Exchanges.**

It was held that, although the cost of service was not the same for each exchange, the confusion of accounts was such that an exact apportionment of the cost of service between the exchanges was impossible and consequently it might be most equitable to establish substantially the same rates for all exchanges.

### **Combination Business and Residence Rates.**

The Commission declared a combination rate for a residence and a business telephone which was less than the sum of the published rates for each, to be unlawful.

### **Order.**

It was ordered that the schedule of rates authorized should cover service throughout one exchange only, except that the two exchanges to be consolidated should be considered as one exchange and free exchange of service with other companies should continue wherever it existed. It was further ordered that these rates should become effective whenever the applicant should install a system of accounts conforming to the classification prescribed by the Commission.\*

## **DECISION AND ORDER.**

This application was filed with the Commission, November 6th, 1912. The applicant is a public utility engaged in the management and operation of telephone exchanges at Rio, Randolph, Fox Lake, Cambria, Fall River and Wyocena, together with toll and rural lines in the surrounding territory. The lawful rates of the applicant as set forth in its petition are as follows:

\$1.00 per month for all telephones, business, residence and rural, except,

1. Rural metallic summer service on Edmonds Island, \$12.50 for 4 months, and \$2.00 per month continued longer.
2. Summer service on First Island, \$15.00 per year.
3. Metallic rural lines, \$15.00 per year.

Bills payable at the end of the quarter.

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\*Editor's headnote.

The petition states that under existing conditions the utility does not derive sufficient revenue to maintain reasonably adequate service, to take care of depreciation and to pay a reasonable return on the property.

No mention is made of revision of the toll rates and it appears to have been the intent of the applicant that only the rates for exchange service should be revised. Applicant asks that rates be fixed so that an adequate return may be obtained.

Hearing was held at Madison, November 29th, 1912.

Appearances were:

For applicant, *North and Crowns*, by *Mr. North*.

In opposition, *J. M. Bushnell*.

Hearing dealt largely with matters pertaining to the financial history of the applicant. It was shown that there has been considerable laxity in the accounting methods employed by the applicant and that, because of this, it has not been practicable to ascertain the exact condition of the business during past years. This made it necessary for the Commission to make an examination of the records of the applicant to learn as nearly as possible, the actual financial condition resulting from the operation of the plant. Such an examination was made for the calendar year 1912. Owing to the fact that the methods employed by the applicant for recording its transactions have not been in accord with the classification of accounts prescribed by the Commission it was difficult to prepare an accurate report of operating revenues and expenses, properly classified, and distinct from renewals and extension of the plant and equipment. As nearly as it has been possible to prepare an accurate statement of revenues and expenses, the following table shows the results obtained by examination of the books:

## STATEMENT OF REVENUES AND EXPENSES.

For the Year Ending Jan. 1, 1913.

	RANDOLPH	RIO	FOX LAKE	CAMBRIA	FALL RIVER	WYOCENA	TOTAL OF ALL EXCHANGES
REVENUES:							
Exchange Telephone Earnings.....	\$4,125.79	\$2,974.90	\$2,899.30	\$2,566.55	\$1,362.65	\$505.50	\$14,434.69
Earnings from Connecting Lines....	103.52	102.83	206.66	29.84	39.31	13.25	495.41
Misc. Exchange System Earnings...		150.00					150.00
TOTAL OF ABOVE.....	\$4,229.31	\$3,227.73	\$3,105.96	\$2,596.39	\$1,401.96	\$518.75	\$15,080.10
Toll System Earnings.....	815.75	188.80	27.81	252.55	34.15	39.65	1,358.71
TOTAL OPERATING REVENUES.....	\$5,045.06	\$3,416.53	\$3,133.77	\$2,848.94	\$1,436.11	\$558.40	\$16,438.81
EXPENSES:							
Central Office .....	\$1,164.36	\$ 824.57	\$ 880.77	\$ 677.50	\$ 657.63	\$260.45	\$ 4,465.28
Wire Plant .....	1,016.44	387.93	407.55	358.98	161.41	96.35	2,428.66
Substation .....	446.16	429.04	498.29	429.08	325.91	119.24	2,247.72
Commercial .....	7.33	3.20	24.06	10.97	9.90	1.00	56.46
General .....	881.01	546.73	605.56	493.81	386.23	159.54	3,072.88
TOTAL OF ABOVE.....	\$3,515.30	\$2,191.47	\$2,416.23	\$1,970.34	\$1,541.08	\$636.58	\$12,271.00
Taxes .....	125.06	106.41	84.14	79.12	38.21	19.60	452.54
TOTAL OPERATING EXPENSES.....	\$3,640.36	\$2,297.88	\$2,500.37	\$2,049.46	\$1,579.29	\$656.18	\$12,723.54
NET OPERATING REVENUE OR DEFICIT .....	\$1,404.70	\$1,118.65	\$ 633.40	\$ 799.48	\$ 143.18*	\$ 97.78*	\$ 3,715.27

\*Deficit.

It will be noted that the two smallest exchanges at Fall River and Wyocena show a deficit for the year. The net operating revenue of the utility as a whole was \$3,715.27.

A valuation of applicant's property was made in connection with a case decided by this Commission, November 7, 1911. In that valuation the six exchanges were shown separately and the rural lines were valued as a distinct portion of the plant. In connection with the case mentioned apportionments of the value of the rural lines among the various local exchanges were made on several bases. The two bases which seemed reasonably accurate were those of the number of rural subscribers connected to each exchange, and the book values as shown by the company's records. We do not have a complete record of additions since the time of the Commission's valuation but the records which are available are probably sufficient for the purposes of this case. With provision made for such extensions as are a matter of record the valuation of local and rural equipment of the various exchanges is as shown below, on the two bases indicated. The toll system is shown separately.

	BASIS OF NUMBER OF RURAL SUBSCRIBERS		BASIS OF REPORTED BOOK VALUE	
	COST NEW	PRES. VAL.	COST NEW	PRES. VAL.
Randolph	\$18,439	\$10,231	\$18,439	\$10,231
Rio	13,639	7,958	13,847	8,061
Fox Lake	9,726	5,357	11,974	6,467
Cambria	12,483	6,375	10,360	5,326
Fall River	6,647	4,018	6,563	3,977
Wyocena	2,634	1,313	2,385	1,190
Toll	1,844	1,040	1,844	1,040
<b>TOTAL</b>	<b>65,412</b>	<b>36,292</b>	<b>65,412</b>	<b>36,292</b>

The cost of plant and equipment as stated in the 1912 report of the applicant is the present value divided among the various exchanges on the basis of the book value from which the apportionment of valuation was made in connection with the decision of November, 1911, and as shown in the last column of the foregoing table.

Before making any computations to show what the schedule of rates should be it may be well to call attention

to some features of the operation of the utility which have a bearing upon the basis which should be employed in charging for service. The utility operates six exchanges and a toll system as shown above. All rural subscribers are furnished service through two exchanges, with the exception of those on metallic circuits. Each rural subscriber on grounded lines is allowed to choose one exchange with which he shall have unlimited service, in addition to the exchange with which his line is directly connected. In a few instances rural lines are connected to two switchboards.

The practice with regard to local subscribers and to rural subscribers on metallic lines is not uniform. At Randolph and Fox Lake local subscribers receive unlimited service through both exchanges. The manager of the utility stated that at the time the exchanges were installed it was the intention to give a free exchange of service between these exchanges until such time as a toll line should be constructed. When the toll line was built the Public Utility Law had become effective and the utility continued the free exchange of service instead of asking for authority, at the time, to establish a toll rate.

Local patrons of the Cambria exchange have free connections with the exchange of the Kingston Telephone Company at Kingston. At Wyocena local subscribers have unlimited exchange of service with the Pardeeville Telephone Company. They can also call subscribers of the Rio exchange free of charge, but local patrons of the Rio exchange are required to pay toll rates for all calls going outside of the exchange. Local subscribers at Fall River have only the local and rural service which can be obtained directly through the Fall River central, except that a limited number of Fall River subscribers are given unlimited service to Columbus, by paying \$3.00 per year, which is an addition to the regular exchange rates, to the Wisconsin Telephone Company.

The utility asks that the free exchange of service between Randolph and Fox Lake be discontinued. The manager of the utility expressed some doubt as to the best means to be taken to handle the business now handled through the Wyocena central. This is a very small exchange, as shown

by the statistics in a later part of this decision. As a result it has not been considered practicable to maintain an operating force to be continually at the switchboard. The work of the switchboard operator has been handled in connection with other duties performed by the operator who has not been devoting her entire time to the service of the company. As a result, service has been slow and relatively unsatisfactory.

In order to overcome this condition it was proposed by the manager that the exchange at Wyocena be discontinued and the lines of Wyocena subscribers carried to the switchboard at Rio, a distance of about five miles, and that service should be thereafter furnished through the Rio central. This seems to be a more efficient method of dealing with the Wyocena business than that followed at present. For practical purposes the existing system at Rio and Wyocena may be considered, in this case, as constituting one operating system as will be the case when proposed changes are made. There seems to be no reason why Randolph and Fox Lake should have free exchange of service, especially as such free exchange is not extended to other exchanges. Although it is permissible for a telephone utility to furnish such service free of charge there is no obligation that the utility shall do so. In this case it seems that free exchange for Randolph and Fox Lake is not advisable nor entirely equitable.

According to the facts which we have before us in this case, therefore, it will be best to consider that the applicant's system, apart from the toll lines, consists of five operating units, Rio and Wyocena being handled as one unit. On the basis of the results obtained from the Commission's inspection of the financial records, the net operating revenue or deficit of the five units are as follows:

Rio-Wyocena .....	\$1,020.87
Randolph .....	1,404.70
Fox Lake .....	633.40
Cambria .....	799.48
Fall River .....	143.18*

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TOTAL NET OPERATING REVENUE.....\$3,715.27

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\*Deficit.

This includes the toll earnings amounting to \$1358.71 and the earnings from connecting lines, amounting to \$645.41, of which \$150.00 is the amount received for switching service performed by the Rio exchange.

Although no definite schedule of rates was asked for in the application, a schedule was outlined on behalf of the utility, at the time of the hearing, which schedule is as follows:

#### LOCAL RATES.

Business .....	\$2.00 per month
Single party residence.....	1.50 per month
Two party residence.....	1.25 per month
Four party residence.....	1.00 per month

#### RURAL RATES.

Metallic circuits .....	1.25 per month
Grounded lines .....	1.00 per month

These rural rates are the same as at present, but it was proposed by the representative of the utility that rural patrons should be furnished service at these rates through only one exchange, and be subject to the regular toll rates for other service.

Following is a statement of the number of 'phones of each class in each of the five operating systems to be considered:

	RIO- WYOCENA	RANDOLPH	FOX LAKE	CAMBRIA	FALL RIVER
1 party business	33	25	23	21	16
2 party business	26	9	11	11	4
3 & 4 party business	2	2	4		2
1 party residence	57	48	48	17	11
2 party residence	12	23	33	5	12
3 & 4 party residence	7	28	22		4
Grounded rural	162	219	91	175	75
Metallic rural	2				2
Part year users		7	14		
<b>TOTAL</b>	<b>301</b>	<b>361</b>	<b>246</b>	<b>229</b>	<b>126</b>

No careful record has been kept of the number of telephones using each class of service but for purposes of this case the foregoing data, representing the most accurate record available, will be used. Of the total of 1263 telephones listed in the directory of January 1st, 1913, it appears that 1236 would pay \$12 each per year under the present rates; 8



would pay \$25.00 each per year; 3 would pay \$18; 11 would pay \$15, 3 would pay \$12.50 and 2 would pay \$10 each per year, so that the total exchange earnings would be \$15,308.50, as compared with actual exchange system earnings of \$14,434.69 for the past year.

Total operating expenses including taxes, but not including any allowance for depreciation or interest amount to \$12,723.54 or a little over \$10.00 per telephone per year. By comparison with reported expenses of other telephone companies, similarly situated, these appear rather high, even with allowance made for the inclusion of toll expenses, and consideration should be given to this condition in fixing upon a schedule of rates.

With depreciation computed at 6½% of the cost of reproduction of the property, and interest at 7% of the present value, the total allowance for these items would be \$6,792.22, or a little more than \$3,000 more than the amount available for those purposes during the past year.

With the rates suggested by the applicant the increase in exchange earnings for the five operating units would be as follows:

	RIO- WYOCENA	RAN- DOLPH	FOX LAKE	FALL RIVER	CAM- BRIA	TOTAL
Business 'phones	\$732	\$432	\$456	\$264	\$384	\$2,268
1 party residence	342	288	288	66	102	1,086
2 party residence	36	69	99	36	15	255
TOTAL	1,110	789	843	366	501	3,609

Although the cost of service is not the same for each of the exchanges, the situation is such that it may be most equitable to establish substantially the same rates for all exchanges. This does not mean that the cost of furnishing service to each exchange, should not, in the final determination of rates, be a governing factor. In this case, however, the records of the utility have not been such as to make it possible to ascertain, with any certainty what are the normal costs of the exchange business of each of the exchanges. The accounting system of the applicant has been entirely inadequate.

quate for the purposes of an accurate distribution of expenses. Also the available facts are not sufficient to enable us to make a separation of the cost of the toll business from that of the exchange business. Because of these conditions it is hardly to be expected that the adjustment of the rates as made in this decision can be considered final. It is altogether probable that at some later time, when the necessary records are available, a readjustment of rates may be made which will eliminate any defects that may exist in the tentative schedule authorized at this time.

If the rates as suggested by the applicant, are authorized, except that the rate for business 'phones is changed to \$1.75 per month for single party 'phones, \$1.50 per month for two party and \$1.40 per month for three and four party 'phones, the estimated increase in revenues will amount to \$2,817 instead of \$3,609. Such a schedule of rates appears to be reasonable.

Where one business 'phone and one residence 'phone are on a line each should be charged the two party rate for the class in which it belongs. Similarly when there are three or four 'phones on a line, divided between business and residence, the three and four party rate for each class should apply. "—a so-called combined rate for a business telephone and a residence telephone which is less than the sum of the regularly published residence and business rates, is unlawful." See "In re Free and Reduced Rate Telephone Service." 2 W.R.C.R. 521-544.\*

The Commission will furnish assistance to enable the utility to comply with that portion of this order which concerns accounting practice.

*It is therefore ordered,*

1. That the applicant is authorized to discontinue its present rate for local business and residence service and to substitute therefore the following rates:

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\*See I Commission Telephone Cases, 31.

1 party business service.....	\$1.75 per month
2 party business service.....	1.50 per month
3 & 4 party business service....	1.40 per month
1 party residence service.....	1.50 per month
2 party residence service.....	1.25 per month
3 & 4 party residence service..	1.00 per month

There shall be a penalty of 15 cents per month applicable to all classes of service for failure to pay bills within 20 days after they become due.

2. That the rates for local service shall be considered as payment for service through one exchange only, except that Rio and Wyocena shall be considered as one exchange, and except in cases where there is free exchange of service with other companies.

3. That the rates hereby authorized shall become effective at such time as the utility installs a system of accounts conforming to the classification prescribed by the Commission.

Dated at Madison, Wisconsin, this 11th day of March, 1913.

# INTERSTATE COMMERCE COMMISSION.

## CONFERENCE RULING.\*

*April 15, 1913.*

### Commissions on Telegraphic Business. [Ed.]

In a case involving a custom of a telegraph company to install wires and instruments in business houses and to arrange with the house on some plan of operating same, it appears in some instances that the telegraph company pays nothing for the space occupied but gives a part of the telegraph receipts to the operator, who is also employed by the house; in other instances the telegraph company pays a regular wage to the operator and gives a proportion of the receipts to the house; in instances where such commissions are paid, the telegraph business of the house itself also carries the commission to the operator or to the house, according to the arrangement. The Commission holds that it is unlawful for a telegraph company to pay to the firm or house in whose building the telegraph office is located, any commission on its own business.

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\*This ruling has been given no number as yet.—Ed.

## CANADA.

### Board of Railway Commissioners.

IN THE MATTER OF THE APPLICATION OF THE CORPORATION OF THE CITY OF TORONTO, HEREINAFTER CALLED THE "APPLICANT", UNDER THE RAILWAY ACT AS AMENDED BY 7-8 EDWARD VII, CHAPTER 61, FOR AN ORDER REQUIRING THE BELL TELEPHONE COMPANY OF CANADA, HEREINAFTER CALLED THE "TELEPHONE COMPANY", TO FILE WITH THE BOARD TARIFFS OF TOLLS, APPLYING THE SAME TOLLS TO THE TERRITORY RECENTLY ANNEXED TO THE CITY OF TORONTO AND FORMERLY KNOWN AS THE TOWN OF NORTH TORONTO AND MOORE PARK DISTRICT, AS ARE NOW CHARGED WITHIN THE LIMITS OF THE TELEPHONE COMPANY'S TORONTO EXCHANGES FOR TORONTO EXCHANGE SERVICE.

File No. 3574.74

*Decided March 8, 1913.*

### Extension of Local Flat Rates to Newly Annexed Territory— Extra Mileage Charges.

Upon application by the City of Toronto for the extension of the Toronto flat rates to the recently annexed districts known as North Toronto and Moore Park, the Company admitted that Moore Park was entitled to the Toronto rates and consequently the issue was confined to the North Toronto district.

It appeared that the rates authorized for North Toronto were the Toronto flat rates plus an extra mileage charge of \$5 per quarter mile or fraction thereof, to be computed from a point three-quarters of a mile from the nearest exchange. This allowance of three-quarters of a mile of free mileage represented the average mileage of wire per telephone in the City of Toronto.

*Held:* That the mere annexation of North Toronto to the City does not warrant an order for the application of the Toronto flat rates to that district;

That the circumstances and conditions affecting telephone service in North Toronto, which is almost entirely a residential section, are not similar to the circumstances and conditions existing within the Toronto Exchange limits;

That there has not been sufficient development in North Toronto to entitle the district to the Toronto flat rates;

That extra mileage charges should be computed only from the exchange limits within which a flat rate is applied;

That the Company should file a new tariff, extending the Toronto flat rates to Moore Park and providing that the extra mileage charges for North Toronto shall be computed from the limits of the Toronto Exchange as they existed on January 1, 1911.

An order was entered accordingly.\*

## OPINION.

### *Assistant Chief Commissioner:*

This is an application by the City of Toronto to have the Toronto telephone rates of \$50.00 for business and \$30.00 for residence telephones, per annum, apply to North Toronto and Moore Park, two districts which have recently been annexed to the City of Toronto.

Moore Park being near Deer Park and Rosedale, two parts of Toronto which enjoy the Toronto rate, and being substantially similar in circumstances and conditions to those sections, is entitled to the Toronto rate; and, at the hearing this was admitted by the Company. Moore Park may, therefore, be not considered further in this matter.

The North Toronto rate is fixed by Supplement No. 10 to the Bell Telephone Company's schedule of rates authorized at Toronto Exchange, dated May 1st, 1911, and filed with this Board as C. R. C. No. 1708. That tariff, which provides the flat rate per annum of \$50 for business and \$30 for residence telephones, states that these charges are to "apply to subscribers' stations situated within Toronto Exchange limits, which are the limits of the City of Toronto, as of date January 1st, 1911," with extra mileage at the rate of \$5.00 per quarter mile or fraction thereof to be computed from a point three-quarters of a mile distant from the nearest exchange.

The nearest Exchange to North Toronto is the North Exchange, near the corner of Yonge and Bismark Streets. This Exchange is one and three-quarter miles south of the southern boundary of North Toronto, so that under the tariff a person residing within North Toronto, but a few feet north of its southern boundary, must pay an extra mileage of

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\*Editor's headnote.

\$20. That is, the Company allows a free area of three-quarters of a mile from its Exchange before commencing to compute its extra mileage of \$5.00 per one-quarter of a mile.

This free area of the first three-quarters of a mile in extra mileage was brought about by a decision of the late Chief Commissioner, Judge Mabee, at the hearing of an application of the Town of North Toronto of the same nature as the present application which was heard by the Board in Toronto on April 26th, 1911. At that time the late Chief Commissioner, recognizing that the circumstances and conditions affecting telephone service in the Town of North Toronto were dissimilar from those in the City, refused the Town's application; but decided that, as the average mileage of wire for a City of Toronto telephone was three-quarters of a mile, a free allowance equal to this average mileage (i. e.,  $\frac{3}{4}$  of a mile) should be allowed before the point from which extra mileage was to be charged should be reached.

Now, what has happened since Judge Mabee's decision to warrant this Board in taking a different view of the matter from what it took at that time? There has been no change in so far as the Exchange is concerned. The people having telephones in North Toronto were then, and are still, connected with the North Exchange of the City of Toronto. At that time there were 157 telephones, and now there are 273 telephones in North Toronto—an increase of 116. The population to-day is 6,300. I do not know what it was at the time of the hearing in April, 1911, but of course, it has, no doubt, increased considerably since then.

The chief ground upon which this application is urged is the fact that North Toronto is now within the City limits. Unless there was something in the language of the tariff to compel the Company to apply the Toronto rate, from time to time, to any district that was annexed to the City, I do not see that the mere annexation of North Toronto to the City would warrant this Board in making the order applied for. It will be observed that in fixing the Toronto Exchange Territory, the Company took as its limits the limits of the City of Toronto as of the date January 1st, 1911, and therefore its Exchange limits being fixed by the limits of the City

on that date, the territory subsequently annexed would not, *ipso facto*, become entitled to the benefit of the Toronto flat rates.

The law provides that all tolls shall always, under substantially similar circumstances and conditions, be charged equally to all persons and at the same rate. From the evidence submitted to us, and from an examination of the North Toronto District and other districts of the City of Toronto, I am forced to come to the conclusion that the circumstances and conditions affecting telephone service in North Toronto are not similar to the circumstances and conditions existing within the Toronto Exchange limits.

The City urged at the hearing that the circumstances and conditions in North Toronto were similar to those in West Toronto. I do not think they are. North Toronto is almost entirely a residential section. The inhabited portions of it constitute a long narrow area following the lines of Yonge Street. The people who live in North Toronto have their places of business, or are employed in the portion of the City of Toronto south of the southern boundary of North Toronto. There are few shops or commercial industries within its limits; whereas West Toronto, before its annexation to the City, was a town of considerable size and might have existed anywhere in the Province irrespective of the fact that it was adjacent to the City of Toronto. West Toronto had a number of large manufacturing concerns. There were a number of doctors, lawyers, banks, retail establishments containing all lines of articles required for household consumption, places of amusement and recreation, etc., within its limits. At the time of its annexation to Toronto, West Toronto had a telephone exchange of its own, with rates for local calls lower than the rates existing in the City of Toronto.

At the time of the annexation of West Toronto to the City, when the Board decided that Toronto rates should apply and that the extra toll for calls from West Toronto to the City should be abolished, some of those having telephones in West Toronto protested that they did not wish to have the City of Toronto rates apply. The circumstances and



conditions respecting telephone service in North Toronto to-day are, I think, quite dissimilar from those existing in West Toronto at the time of its annexation, and the subsequent bringing into effect of the City of Toronto flat rate in West Toronto.

A comparison with the eastern portion of Toronto served by the Beach Exchange was also submitted to the Board. The circumstances and conditions affecting subscribers on the Beach Exchange are not similar to those in North Toronto. The area served by the Beach Exchange is a little less than that of North Toronto; but the population is 24,000 as against 6,300, and the number of telephones 1,466 as compared with 273. The Beach District has its own Exchange and North Toronto has not. In my opinion there has not yet been sufficient development in North Toronto to warrant the Board in deciding that it is entitled to the City flat rate.

In the case of the Montreal Telephone Rates,\* which we had before us some months ago, the Board came to the conclusion that mileage should only commence to be computed from the exchange limits within which a flat rate applied. This principle being applied to this case would have the effect of reducing the rate to be paid by any single line subscriber in North Toronto by \$20, because the extra mileage would only commence at what was the City limits on January 1st, 1911, instead of at a point three-quarters of a mile from the North Exchange, which is provided by the tariff at present in effect.

I therefore think an order should go that the Company forthwith file a new tariff, to become effective on the 1st of April next, providing that extra mileage for North Toronto is only to be computed from the limits of its Toronto Exchange; that is, what were the City limits on January 1st, 1911, and that Moore Park be given the Toronto flat rates.

In disposing of this matter in this way the Board is not to be taken as declaring that the Company's charge of \$5 per quarter of a mile as extra mileage is a reasonable charge. The question whether this rate is a reasonable or an unreasonable one was not discussed in this case nor were we given

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\*Printed in Commission Leaflet No. 13, at page 93.

any evidence to warrant us in coming to any conclusion about it. We have this question before us, and if at any future time we come to the conclusion that \$5.00 per quarter mile is an excessive charge for extra mileage, it would, of course, apply in this case.

In this memorandum I have not dealt with the question of party lines. These are proportionally lower than the one-party line rates, and there is no question of principle affecting them which would not be governed by the decision of the Board on the one-party line rates which I have been discussing.

Ottawa, March 8th, 1913.

ORDER NO. 18886.

*Dated March 18, 1913.*

Upon hearing the application at the Sittings of the Board held in the City of Toronto, February 7, 1913, in the presence of Counsel for the Applicant and the Telephone Company, and what was alleged,

*It is ordered*, that the Telephone Company be, and it is hereby required to file a tariff to become effective not later than the first day of April, 1913, to provide that the extra mileage chargeable to North Toronto subscribers be computed from the Toronto Exchange limits as they existed on the first of January, 1911, and that Moore Park District be given the Toronto flat rates.

## PART II.

### COMMISSION ORDERS, RULINGS AND DECISIONS OF INTEREST TO TELEPHONE AND TELE- GRAPH COMPANIES.

[*Note: Owing to lack of space, only summary statements of many of the decisions involving points of interest are printed in this Leaflet.—Ed.*]

#### CALIFORNIA.

##### Railroad Commission.

IN THE MATTER OF THE APPLICATION OF MIDWAY GAS COMPANY FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND AUTHORIZATION TO EXERCISE RIGHTS AND PRIVILEGES UNDER FRANCHISES HERETOFORE GRANTED TO IT IN THE COUNTIES OF KERN AND LOS ANGELES AND IN THE CITIES OF SAN FERNANDO AND BURBANK, UNDER SECTIONS 50a, b AND c OF THE PUBLIC UTILITIES ACT.

Application No. 202—Decision No. 468.

*Decided February 20, 1913.*

**Certificate of Public Convenience and Necessity Denied—Attempt  
to Prevent Public Regulation—Monopoly—Limitation of  
Territory—Control of Wholesale Price—Public  
Regulation of Wholesale Business—  
Promoter's Compensation. [Ed.]**

Applicant asks the Commission to issue a certificate that the present and future public convenience and necessity require the construction by it of a pipe line for the transmission of natural gas from certain natural gas fields in Kern County to a point within three miles of the city of Los Angeles, and for approval of the exercise of rights and privileges under certain franchises granted it by local authorities. It developed that the application concerned only a comparatively minor step in the proposed development, long distance transmission and distribution of natural gas in the city of Los Angeles and territory adjacent thereto. In determining the application, the project in its entirety was considered.

Four classes of parties are involved, to wit: (1) Honolulu Consolidated Oil Company, Southern Pacific Railroad Company, Kern Trading and Oil Company. Associated Oil Company and William G. Kerckhoff, the parties owning or claiming title to the lands upon which the supply of natural gas has been located; (2) the applicant, Midway Gas Company, owner of transmission line and under contract to purchase specified quantities of natural gas at agreed prices from first parties with the object alone of transmitting such gas; (3) Southern California Gas Company, operating in the city of Los Angeles, and under contract to purchase the gas transmitted through the pipe system of second party, at agreed prices, with the dual object of distributing such gas wholesale to Los Angeles Gas and Electric Corporation, another company operating in Los Angeles, and to its own patrons; and (4) Los Angeles Gas and Electric Corporation under contract to purchase specified quantities of such gas from the third party at agreed prices, with the general object of distributing same for light, heat and power purposes to its patrons and its constituent companies.

The several contracts covering these respective arrangements summarized as to their essential terms and conditions and commented upon, the Commission being of the opinion that the purpose of the entire scheme is to limit output, restrict distribution and fix wholesale costs beyond the chance of any unwelcome public regulation. This scheme is sought to be consummated by (1) preventing others than the participants in these contracts from buying natural gas; (2) preventing others than the participants in these contracts from selling natural gas, either wholesale or retail; (3) limiting the territory within which the gas may be distributed; and (4) fixing a price in the contracts for gas at wholesale and providing that, in the event public authority shall successfully exert itself, the whole scheme shall fall. The result of the consummation of this scheme will be to bring about a monopoly which is not subject to restraint; a monopoly which will be in control of a cheap supply of natural gas and capable of destroying any competitors, except those that have found favor in its sight, by reason of its ability to undersell them, and it will have as the initial cost of this commodity a price which it is endeavored with the utmost care to exempt from public meddling, and a price which, if this scheme is legal at all, public authority, either State or municipal, must accept as the point from which to proceed in fixing rates.

*Held:* The wholesaler is just as much in need of regulation as the retailer and the law can and should look through the shadow to the substance and take cognizance of a scheme to defeat the best interests of the public under whatsoever guise such a scheme is found to exist.

*Held:* If, as here, it is sought not to benefit the public but to benefit the promoters and utility companies entirely under such terms as will prevent any adequate regulation by competent authority, public convenience and necessity does not require the granting of such an application, but that the carrying out of such a scheme would be directly contrary to the public interest.

Said contracts construed with relation to the effect of their performance upon the rights of the United States Government which are at issue in the courts in an action brought by the government to sustain its title to said natural gas bearing lands or any of them.

Application denied without prejudice to its renewal. To meet with the approval of the Commission, however, the matter must be presented freed

from any attempt to remove it from reasonable regulation by competent public authority.

*S. M. Haskins*, for applicant.

## REPORT.

**ESHLEMAN and EDGERTON, Commissioners:**

The applicant is a corporation organized and existing under the laws of the State of California, and is empowered to produce, purchase, acquire, transmit, distribute and sell natural and artificial gas to be used for lighting, heating, fuel or for any other uses to which combustible gas can be applied, and to supply such gas to municipalities in California and to their citizens and other persons and corporations. It is, therefore, a "gas corporation" and a "public utility" as defined in section 1*p* and *bb* of the Public Utilities Act.

It applies for a certificate of public convenience and necessity under the provisions of the Public Utilities Act, and for the right to exercise franchises heretofore granted but not heretofore actually exercised. It is set up in the application that "before the twenty-third day of March, 1912, the said Midway Gas Company purchased from the boards of supervisors of the counties of Kern and Los Angeles, and from the boards of supervisors of San Fernando and Burbank franchises to maintain such pipe lines." It is likewise alleged that large amounts of money had been expended by the applicant in construction of its enterprise before the twenty-third day of March, 1912. The intent may be to bring the case under that portion of section 50*b* of the Public Utilities Act which provides that "when the Commission shall find, after hearing, that a public utility has heretofore begun actual construction work and is prosecuting such work, in good faith, uninterruptedly and with reasonable diligence in proportion to the magnitude of the undertaking, under any franchise or permit heretofore granted but not heretofore actually exercised, such public utility may proceed, under such rules and regulations as the Commission may prescribe, to the completion of such work, and may,

after such completion, exercise such right or privilege." That the applicant does not come under this provision, but is in the position of one who has secured franchises but has not actually been constructing thereunder prior to March 23, 1912, is plain from a reference to the ordinances granting such franchises.

The ordinance of the city of Burbank granting a right of way through that city was introduced on the sixteenth day of March, 1912, and passed on the twenty-third day of March, 1912. Evidently there could not have been any construction work undertaken under this ordinance prior to the twenty-third day of March, 1912, and any construction which had been done in the city of Burbank prior to such time was not under a franchise.

The ordinance passed by the board of supervisors of Kern County granting rights of way and franchises within said county was passed on the twelfth day of March, 1912, but in terms did not become effective until the first day of April, 1912. Therefore, any construction work done in the county of Kern prior to the first day of April, 1912, was not done under a franchise effective before the twenty-third day of March, 1912.

The ordinance of the city of San Fernando granting franchise to pass through said city and operate therein, was not granted until the first day of April, 1912.

It appears that the only ordinance granting franchise which actually took effect before the twenty-third day of March, 1912, was the ordinance of the board of supervisors of Los Angeles County, which became effective on the twenty-first day of March, 1912.

Plainly, therefore, whatever construction had been made by this company anywhere upon its line, except in Los Angeles County, before the twenty-third day of March, 1912, was not made under a franchise, and as to the construction in the county of Los Angeles, none except that which was done on the twenty-first and twenty-second of March could be said to have been done under a franchise.

After reciting the securing of franchises and the construction of a portion of its pipe line, the applicant asks that

this Commission "issue its certificate that the present and future public convenience and necessity require the construction of said pipe line and the exercise of the rights granted by said franchises."

The plan of applicant is to construct a pipe line from the natural gas fields in Kern County to a point within three miles of the city of Los Angeles. The gas to be transmitted is to be purchased from other parties owning or claiming title to the land upon which the supply has been located, and is to be sold by applicant to another public utility. This other utility in turn proposes not alone to distribute and sell such gas to its present consumers in and adjacent to the city of Los Angeles, but to sell in wholesale quantities to a competitor company, which in turn will distribute and resell such gas to its customers and affiliated companies in and about Los Angeles. In brief, the scheme is as follows:

John Martin made certain contracts with the Honolulu Consolidated Oil Company to purchase gas from this company, and has assigned these contracts to the applicant, the Midway Gas Company, which is constructing the pipe line. The Midway Gas Company has entered into a contract with the Southern California Gas Company to sell all of its gas at wholesale to said Southern California Gas Company. The Southern California Gas Company has likewise contracted for a supply of gas from the Southern Pacific Railroad Company, Kern Trading and Oil Company, Associated Oil Company and William G. Kerckhoff, thus acquiring the entire supply which is the subject of these contracts. The Southern California Gas Company has contracted with the Midway Gas Company for conveying all of the gas for which it has contracted through the pipe line of the Midway Gas Company to a point in Los Angeles County near the city of Los Angeles, and has guaranteed all of the bonded indebtedness of the Midway Gas Company amounting to \$3,000,000, and has agreed to pay said company five cents per thousand cubic feet for all gas carried through said pipe. The Southern California Gas Company has in turn contracted to deliver to the Los Angeles Gas and Electric Company gas at whole-

sale, and will both distribute the gas at wholesale to the Los Angeles Gas and Electric Corporation and distribute it to its own patrons. Thus we have roughly the parties involved thrown into four classes: first, owners or lessees of land from which the gas is drawn—Honolulu Consolidated Oil Company, Southern Pacific Railroad Company, Kern Trading and Oil Company, Associated Oil Company and William G. Kerckhoff; second, owner of pipe line—Midway Gas Company; third, wholesaler of gas—Southern California Gas Company; fourth, retailers of gas—Southern California Gas Company and Los Angeles Gas and Electric Company. It will here readily appear that the applicant occupies a very minor place in the entire scheme, and when the contracts are analyzed, as I think briefly should be done, its position will be seen to be even less important.

The first contract which was entered into was that between John Martin and the Honolulu Consolidated Oil Company, wherein said Martin arranged for a supply ranging from fifteen million to twenty-five million cubic feet of gas daily for which he was to pay five cents per one thousand cubic feet. By a subsequent contract of November 17, 1911, between the same parties, the company agrees not to sell to any other party than Martin "anywhere in the State of California outside of the counties of Los Angeles, Orange, San Bernardino, Riverside, or San Diego" without giving Martin thirty days' option to take such gas on the terms equal to those offered by any other such party. The company further agrees that if during the life of the contract it shall market gas at any point in these counties it will market the same through Martin at a price which shall net to the selling company the same rates as it shall be entitled to receive for the gas sold under the contract of November 2d. These contracts between the Honolulu Consolidated Oil Company and Martin were on November 18, 1911, assigned to the Midway Gas Company.

The next contract in point of time was that between the Midway Gas Company and the Southern California Gas Company, wherein the Midway Gas Company leases to the Southern California Gas Company all of its pipe line, rights of way



and appurtenances of every sort and constitutes the lessee its agent and representative to exercise and enforce all of the Midway Company's rights to the delivery of gas under the contracts of the Honolulu Consolidated Oil Company and John Martin, theretofore assigned to the Midway Gas Company. In this contract the Southern California Gas Company is substituted to the Midway Gas Company in its obligations to pay the Honolulu Consolidated Oil Company. Likewise, the Southern California Gas Company guarantees the payment of the \$3,000,000 issue of bonds outstanding and also the upkeep of the system, but the expense of such upkeep is to be taken out of rentals.

By a subsequent agreement of the next day, December 6, 1911, the Midway Gas Company agrees to set aside sufficient from its revenues before declaring dividends to pay the interest on its bonded debt and the bonds at maturity, and on the same day, by contract between the Southern California Gas Company and the Mercantile Trust Company, the Southern California Gas Company assumes the obligation to pay the interest and principal of the bonds of the Midway Gas Company.

By an agreement of March 1, 1912, between Southern Pacific Railroad Company, Kern Trading and Oil Company, Associated Oil Company, Southern California Gas Company, Midway Gas Company and William G. Kerckhoff, the Southern California Gas Company secures the right to a supply varying from 15,000,000 to 25,000,000 cubic feet of gas per day. It is set out in this agreement that the Southern Pacific Railroad Company, the Kern Trading and Oil Company and the Associated Oil Company would neither of them grant to the Southern California Gas Company the right to enter upon their lands, or upon the lands of either of them, for the development of gas thereon, and would not enter into this agreement with the gas company unless said Southern California Gas Company and Midway Gas Company would enter into this contract. The design of the contract seems to be to insure the payment of three cents per thousand cubic feet to the Southern Pacific Company, the Kern Trading and Oil Company, both for the gas acquired from their

lands and gas acquired from adjoining lands, on the theory apparently that the gas would be drawn off from the lands of these companies if adjoining lands were tapped, and these lands were not. At any rate it is provided that in addition to the three cents per thousand cubic feet which is to be paid by the Southern California Gas Company to the Southern Pacific Railroad Company, the Kern Trading and Oil Company and the Associated Oil Company for gas produced and saved from their own lands, said Southern California Gas Company shall pay three cents per thousand cubic feet for all gas produced, saved, purchased or piped by the Southern California Gas Company and W. G. Kerckhoff from the lands of the Honolulu Consolidated Oil Company, or from the lands of any other owner in the Midway fields and the Buena Vista Hills, and also three cents per thousand cubic feet on all gas produced and saved from the lands of the Honolulu Consolidated Oil Company whether or not purchased by the Southern California Gas Company or the Midway Gas Company, except a small amount reserved to be sold in the Midway field. These payments were to begin at the time of the signing of the agreement, namely, March 1, 1912. The effect of this provision is to give the Southern Pacific Railroad Company and these two large oil companies a payment of three cents per thousand cubic feet for all gas taken from this extensive field, regardless of the land from which it is taken.

It has further provided a guarantee by the Southern California Gas Company and Kerckhoff that the gas which is sold by the California Natural Gas Company for use in the Midway oil field, shall not be piped to any place outside such Midway oil fields, and if the Honolulu Consolidated Oil Company shall sell any gas to this local California Natural Gas Company for any other purpose than delivery within the Midway field, or if the Honolulu Consolidated Oil Company shall sell any gas to any other person or corporation, then the Southern California Gas Company shall also pay to the Southern Pacific Railroad Company and the two large oil companies, three cents per thousand cubic feet for all such gas sold.

So the active agency here, the Southern California Gas Company, not only pays this railroad and these two large oil companies three cents for gas wheresoever secured, but it undertakes to make parties not subject to the agreement perform a like service and in the event it cannot do so, it undertakes to pay three cents per thousand cubic feet to these large agencies.

It is further provided that the Southern California Gas Company shall not without the consent of the Southern Pacific Railroad Company and these two larger companies, parties to this agreement, extract from their lands more than two thirds of all the gas produced, purchased and piped for the gas company from said Midway oil field, the design being apparently to limit the amount to be obtained to two-thirds the total requirements from these larger companies and one-third from the Honolulu Consolidated Oil Company and other sources of supply. There is also a provision to the effect that any and all corporations or associations engaged in the business of selling gas in Southern California which may now, or hereafter during the life of this agreement, be owned or controlled by either the Midway Gas Company, the Southern California Gas Company or William G. Kerckhoff, or whose operations may be conducted directly or indirectly for any of said parties shall be bound by this agreement.

A second contract was also made on the first day of March, 1912, between the Southern Pacific Railroad Company, Kern Trading and Oil Company, Associated Oil Company and the Southern California Gas Company, which provides for the entering upon the lands of these first companies by the Southern California Gas Company for the purpose of developing gas wells. It is provided, however, that aside from the provisions for securing a supply of gas and the price to be paid therefor the main point of interest in this contract is the additional attempt to limit the operation of the Southern California Gas Company and the output of gas. It is provided that the contract is not assignable and that on the bankruptcy of the Southern California Gas Company the contract is terminable by the railroad and oil companies.

It is further provided that the Southern California Gas Company shall give the Southern Pacific Railroad and its affiliated companies preference in the transportation of any traffic which the gas company or its affiliated companies may be able to control. The same provision as occurs in the other contract of this same date is found, namely, that the Southern California Gas Company shall cause everyone whom it may control directly or indirectly, to abide by the terms of this contract.

The last contract of this series is by far the most important for the purposes of this decision, but an extensive review is not necessary. It was entered into on the twenty-sixth day of October, 1912, between the Southern California Gas Company, the Los Angeles Gas and Electric Corporation, and the Midway Gas Company—which, however, is only a nominal party—and deals with the sale and distribution of the natural gas to be acquired by the Southern California Gas Company through the contracts heretofore outlined. It is provided that the Southern California Gas Company shall not transmit and deliver gas to any one in Los Angeles County before April 1, 1913, unless the Los Angeles Gas and Electric Corporation before that time shall have exercised its option to take the full amount of gas it is then entitled to, except, however, that the Southern California Gas Company may supply gas to public utility companies for operating artificial gas or electric generating plants or compressors, and to the Southern California Edison Company and its affiliated companies for resale to consumers in Venice and other communities in that vicinity, and to Western Fuel, Gas and Power Company for resale to its consumers in Redondo and vicinity, and to Southern Counties Gas Company for resale to its consumers and to the consumers of the Southern California Gas Company itself in Compton, Beverly, Tropic, Glendale, San Fernando, and Torrence. In this provision definite boundaries are mapped out within which the various companies may distribute natural gas, and it not surprising that in view of this fact the following proviso is inserted:

"Nothing in this article is intended to be in contravention or against the policy of the law, but should any provision thereof be judicially determined to be in contravention or against such policy such determination shall not invalidate or affect any other provisions of this contract."

At least the parties to this contract had some doubt as to what public authority would do with reference to this limiting provision. It is further provided that if the Southern California Gas Company shall not have made the connection from its leased pipe line with the system of the Los Angeles Gas and Electric Corporation prior to April 1, 1913, that no obligation shall rest upon either of the parties to the contract to take or deliver natural gas prior to such date unless the Southern California Gas Company "willingly" is delivering gas to "any customer or consumer for use or resale in any portion of Los Angeles County, except in the cities of San Fernando, Burbank, Glendale and Tropic and their immediate vicinity outside the city of Los Angeles, as it now exists, and west to the most westerly boundary line of the city of Eagle Rock and the prolongation of such boundary line to the north and the south," in which event the Southern California Gas Company shall be required immediately to deliver gas to the Los Angeles Gas and Electric Corporation. Here again an attempt is made to limit territory and the plain inference thrown out that exclusive territory within the county of Los Angeles is "owned" by these two companies, parties to this contract. And, again, in article 12 of the contract we find this language:

"This agreement on the part of second party (Los Angeles Gas and Electric Corporation) to take any such gas is for the purpose of enabling first party (Southern California Gas Company) to dispose of its gas, and second party shall be under obligations to receive and pay for the gas which, as heretofore provided, shall be supplied to it only so long as first party is not supplying gas to customers or consumers in territory now supplied by second party with artificial gas or any territory which may hereafter be supplied by second party with

artificial gas or artificial gas mixed with gas and in which last mentioned territory first party was not itself directly or indirectly supplying gas or artificial gas prior to the second party."

And again in the same article we find the following provision:

"If by reason of any lawful act or action on the part of any legally constituted authority the prices to be paid first party by second party are at any time substantially lowered or the obligations, or any thereof of the first party under this contract are substantially increased or rendered substantially more onerous, then first party shall have the right at its option upon giving thirty days' notice to second party, to suspend this contract and cease the development and bringing of gas to the county of Los Angeles."

And further:

"If without application or procurement by first or third party (Midway Gas Company) any legally constituted authority shall lawfully increase the price to be paid first party by second party for any of the classes of gas, as classified in article 13, and such gas cannot be delivered to second party by first party at the prices provided in this contract, then first party shall give second party notice of such increase, and within ten days after receipt of such notice second party shall have the right at its option to take or refuse to take a class of gas as to which the price will be so increased."

The fear of competition with natural gas secured elsewhere is shown by the restriction in article 13 of the contract, which provides that if natural gas is discovered elsewhere and actually introduced into the city of Los Angeles and adjacent communities by other agencies and competition is brought about, and such competition reduces the earnings of the Los Angeles Gas and Electric Corporation to six per cent. net upon the total value of its works and system, the Los Angeles Gas and Electric Corporation shall have the right to cancel the contract or procure any portion of its requirements of natural or artificial gas elsewhere.

The last provision of this contract to which it is necessary to refer is one wherein it is provided that should the government of the United States, or any adverse claimants to the lands of the Southern Pacific Railroad Company, the Kern Trading and Oil Company, and the Associated Oil Company, secure title to said lands from the said railroad company and oil companies, then, the three cents per thousand cubic feet, which it is provided shall be paid the Southern California Gas Company to this railroad company and these oil companies, shall be reduced in proportion to the amount of land which is taken from these companies by said adverse claimants.

It is our construction of the contract that, if the government of the United States should acquire in its suits against these companies one-half their lands, for example, then the Southern California Gas Company shall only be obliged to pay half as much to these companies for the gas which it secures from the Midway fields. The intent and effect of this provision, read in connection with the contract of March 1, 1912, between the Southern Pacific Railroad Company, Kern Trading and Oil Company, Associated Oil Company, Southern California Gas Company, Midway Gas Company and William G. Kerckhoff, seems to be that this railroad company and these large oil companies may collect this three cents per thousand cubic feet, pending the determination of their title to their lands, and, thereafter, must reduce the amount collected as herein provided, but no provision is made for them to return the money, collected in the meantime, to the United States, or any other real owner of the lands. Apparently if the government happens to sustain its title to the lands, or any of them, the taking of gas by these gas companies from lands adjoining such government land either does not drain gas from under such lands or the contracting parties are willing to have it understood that even if such is the case they are willing to take gas from the government without paying therefor. In effect we have an arrangement whereby during the pendency of these suits the Southern Pacific Railroad Company and these oil companies are paid for a commodity which if it be subject to sale at all is only

subject to sale by the government of the United States if in fact the title is in the government. It may be urged that the United States is able to look after its own interest in this regard. However this may be, we do not look with favor upon an arrangement whereby these companies drain off from land, which may be public land of the United States, a valuable commodity, sell the same, pocket the proceeds, and make no provision for voluntarily returning such proceeds to the rightful owner of the land if it be determined these contracting parties are not such rightful owners.

These contracts are very voluminous. The last one that we have just been considering consists of seventy-five typewritten pages. But we have considered it necessary to give them a careful study and also to present this outline, so that the basis for our conclusions may be apparent. The entire scheme is to limit output, restrict distribution and fix wholesale costs beyond the chance of any unwelcome public regulation. This scheme is sought to be consummated by—

**FIRST**—Preventing others than the participants in these contracts from buying natural gas;

**SECOND**—Preventing others than the participants in these contracts from selling natural gas, either wholesale or retail;

**THIRD**—Limiting the territory within which the gas may be distributed; and

**FOURTH**—Fixing a price in the contracts for gas at wholesale and providing that in the event public authority shall successfully exert itself, the whole scheme shall fall.

The result of the consummation of this scheme will be that we will have an agency, namely, the Southern California Gas Company, which will be in control of a supply of natural gas, with the price immutably fixed and with its consumers limited to favored persons—alleged competitors—but not so in reality, and to its own consumers. Thus we will bring about a monopoly which is not subject to restraint; a monopoly which will be in control of a cheap supply of natural gas and capable of destroying any competitors, except those that have found favor in its sight, by reason of its ability to undersell them, and it will have, as the initial cost of this commodity, a price which it is endeavored with the utmost



care to exempt from public meddling, and a price which, if this scheme is legal at all, public authority, either state or municipal, must accept as the point from which to proceed in fixing rates.

The price may or may not be proper, but it is the wise policy of the law, as an outgrowth of the necessities of consumers that the substance shall be regulated and not the shadow. If this scheme can be carried through in this instance, it can be carried through in others, and while there may not be a relationship in this instance, between the buyer and seller of this commodity which admits of collusion in fixing the price, still the possibility exists, and, for all we know, the price could have as easily been placed by the parties to these contracts at double the figures herein provided as at such figure. The wholesaler is just as much in need of regulation as the retailer and we believe the law can, and should, look through the shadow to the substance and take cognizance of a scheme to defeat the best interests of the public under whatsoever guise such a scheme is found to exist.

The last, and most important contract, between the Southern California Gas Company, the Los Angeles Gas and Electric Corporation and the Midway Gas Company, the applicant herein, was entered into after the Public Utilities Act became effective, and, therefore, in our opinion, to have any effect at all, must be approved by this Commission.

We do not believe it is necessary to review these contracts or this application further to have it appear that public convenience and necessity will not be served by granting the application. The applicant says "that the enterprise undertaken by your petitioner will result in the establishment of a new industry and the beneficial use of a natural product of the State that is now practically undeveloped." This sounds very well, and we agree thoroughly with the applicant, that under proper conditions the use of a natural product which may be produced cheaply and the substitution thereof for another commodity, which is a result of manufacture, is usually a good thing for the public and that public convenience and necessity may be served by such an undertaking,

but it must be readily admitted that this is entirely dependent upon the terms upon which the natural commodity is presented to the public. If, as here, it is sought not to benefit the public, but to benefit the promoters and utility companies entirely under such terms as will prevent any adequate regulation by competent authority, we have no hesitancy in saying that the public convenience and necessity does not require the granting of such an application, but that the carrying out of such a scheme would be directly contrary to the public interest.

We do not want to be understood as saying that we do not think liberal profits should be made by men of ideas who assume the risk of the development of an enterprise such as this one, and whose breadth of vision permits the conception thereof, and we do not complain even about the very liberal compensation which apparently Mr. Martin and his associates would make out of this idea and this enterprise, but we are strongly of the opinion that for the Commission directly or indirectly to approve a scheme which relieves a public utility of very necessary regulation would make us parties to whatsoever unreasonable exactions or unreasonable practices would be resorted to by this enterprise, and would likewise be a recognition that such a plan may be carried out under even worse circumstances. We believe that this scheme can be presented on such terms as will meet the approval of this Commission, but we find specifically as a fact after careful consideration, that to grant the application on the terms made would not serve public convenience and necessity, but we find as a fact to permit this applicant, and indirectly the other participants in the enterprise, to exercise franchises and to complete this pipe line would be directly subservient of public convenience and necessity. Believing, as we do, that this plan may be worked out in such a way that while being fair to the promoters and producers of the natural gas it will likewise be fair to the public, and believing likewise that the enterprise in itself if freed from the objections which we have here set out may greatly benefit the public, we suggest that the applicant again submit the matter to the Commission formally or informally with a view to working

out the plan as we believe it should be. As we have said, we do not desire in any way to prevent the promoters of this enterprise from profiting by it, nor do we object to reasonable restrictions which may be found necessary on account of the nature of the enterprise and the commodity served, and although we cannot approve the application under the conditions which are now before us we wish it plainly understood that we desire to assist the promoters in carrying out this enterprise along proper lines and not to impede them. To meet with the approval of this Commission, however, the matter must be presented freed from any attempt to remove it from reasonable regulation by competent public authority.

We, therefore, submit the following order:

#### ORDER.

Midway Gas Company having applied to this Commission for a certificate that the present and future public convenience and necessity require the construction by it of a pipe line from the Midway Oil Fields in Kern County to a point near the city of Los Angeles, in the county of Los Angeles, and the exercise by said applicant of franchise rights heretofore granted but not actually exercised, and a hearing having been held, and being fully advised in the premises.

The Commission hereby finds as a fact that public convenience and necessity would not be served by the granting of said application under the present conditions brought about by the various contracts reviewed herein; and

*It is hereby ordered*, that the said application be, and the same is, hereby denied without prejudice to its renewal.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 20th day of February, 1913.

IN THE MATTER OF THE APPLICATION OF TULARE COUNTY POWER COMPANY FOR AN ORDER AUTHORIZING IT TO EXECUTE A MORTGAGE AND DEED OF TRUST TO MERCANTILE TRUST COMPANY OF SAN FRANCISCO; AND TO SELL OR PLEDGE AS SECURITY THREE HUNDRED THOUSAND DOLLARS OF BONDS.

Application No. 368—Decision No. 475.

*Decided February 20, 1913.*

**Authorization of Bond Issue—Opposition Grounded on Low Rate Charged—Initial Development of Applicant—Bond Discount—Additional Sum to be Raised by Stockholders. [Ed.]**

The Tulare County Power Company made application for permission to execute a mortgage to secure an issue of \$500,000 six per cent. bonds, to sell \$300,000 of said bonds at 80, and to devote the proceeds to the discharge of obligations and to new construction. The Mount Whitney Power and Electric Company intervened in opposition on the ground that the \$36 per horsepower rate of applicant could not but result in a deficit with disastrous consequences. The Commission found that said rate is intended to provide service at cost and that the contract for such rate contains a provision for the payment of an additional sum, if necessary, to cover the cost of the service. Also, that applicant, who has been operating less than one year and may be regarded as in the initial period of business development, was able to show ownership of physical properties of the value in excess of the proposed \$300,000 bond issue, and that its profit and loss statement indicates that applicant is more than making ordinary operating expenses and shows a steady increase in gross earnings.

*Held:* Application granted, the bonds, if used as collateral, to be pledged for not less than 75 per cent. of their face value and, if sold, the selling price to be not less than 80 per cent.; and upon the further condition, among others, that applicant shall, within specified time, raise, from the holders of its stock, in a manner to be approved by the Commission, the sum of \$15,000, and shall invest said sum in addition or betterments to its plant or system.

*A. M. Drew and Goodfellow, Eels and Orrick*, for Tulare County Power Company.

*Jesse W. Lilienthal*, for Mount Whitney Power and Electric Company.

*Robert McGahie*, for F. W. Corcoran, a stockholder in Tulare County Power Company.

## REPORT.

LOVELAND, *Commissioner*:

This is an application by Tulare County Power Company to execute a mortgage and deed of trust to Mercantile Trust Company of San Francisco to secure an authorized issue of \$500,000 of bonds; and to issue or pledge as collateral security \$300,000 of said bonds. Tulare County Power Company asks also that the Commission vacate its order of September 25, 1912, authorizing said corporation to mortgage its property to Thomas C. Job.

Tulare County Power Company is engaged in the business of furnishing light and power in the county of Tulare. It began operations on April 17, 1912, and on July 11th, last year, was given authority under an order of this Commission, to distribute and sell electricity under franchises in Tulare County and in the cities of Tulare, Lindsay, and Exeter, of said county.

Thereafter, upon application of said corporation, this Commission issued an order on September 25th empowering Tulare County Power Company to mortgage its property to Thomas C. Job in the amount of \$175,000. The order upon this matter contained a description of applicant's plant, operations, territory and general financial condition. It is not necessary, therefore, to go into these details again for the purposes of the matters now under consideration. The negotiations with Thomas C. Job failed of consummation and the applicant now desires to enter into new arrangements to obtain money for future financing.

The applicant has been operating less than one year and may be regarded as in the initial period of business development. It was able to show ownership of physical properties of a value in excess of the proposed issue of bonds of \$300,000. The profit and loss statement indicates that applicant is more than making ordinary operating expenses and shows a steady increase in gross earnings.

Due allowance must be made for a corporation in its first year of operation. It cannot be expected to show its full earning strength and a substantial increase of gross receipts

month by month cannot but be regarded as a hopeful indication of future stability. Tulare County Power Company operates in a rich agricultural section and is drawing a large part of its revenues from pump irrigation business. There is a large field for the development of this business and the applicant herein proposes with a portion of the proceeds from the sale of its bonds to extend its transmission lines so as to reap the full benefits of the business now offered.

It is the purpose of Tulare County Power Company to execute its mortgage and deed of trust, dated January 2nd, 1913, to Mercantile Trust Company to secure an issue of \$500,000 of 6 per cent. sinking fund bonds of the par value of \$500 each and to sell or hypothecate \$300,000 of said bonds. It is proposed to devote the proceeds from the sale of these bonds to the following purposes:

To discharge notes payable, as listed in the application on file with this Commission in the sum of.....	\$156,681 61
To discharge accounts payable, as listed in the application on file with this Commission in the sum of....	48,733 17
To pay "vouchers and pay checks payable," as listed in the application on file with this Commission.....	8,916 02
To build transmission lines to connect with new business as offered .....	60,000 00
<b>Total .....</b>	<b>\$274,330 80</b>

Nearly all of this indebtedness has been incurred in the purchase and installation of electrical equipment and machinery.

An engineer and an accountant from the Commission have made an inventory of applicant's property and have made an inspection of its accounts. Upon the basis of their report, I find that there are properly chargeable to capital account all of the notes payable, with the exception of notes in the sum of \$3,500 representing commissions on stock, leaving an amount to be paid from the proceeds of bonds of \$153,181.61; I find also from the report rendered by the accountant of the Commission that, properly chargeable to capital account, are accounts payable in the sum of \$40,209.67; and "vouchers and pay checks payable" in the sum of \$6,208.66; I find also that the transmission lines are needed and should be paid

from the sale of the bonds in the sum of \$60,000. Total, \$259,599.94.

Applicant at first believed that it could sell its bonds at 90, but has since made representations to the Commission that it cannot well sell its bonds at a price above 80. This price for the 6 per cent. bonds would tend to cast a heavy interest burden upon the company. I believe that 85 should be the minimum price for the sale of these bonds and while I shall recommend that the applicant be given authority to sell these bonds at a minimum of 80, I shall join with it another recommendation that the balance to make up 85 be supplied by the stockholders.

At the hearing upon this application, Mount Whitney Power and Electric Company intervened in opposition. Mr. Robert McGahie, representing Mr. F. W. Corcoran, stockholder in the Tulare County Power Company, also intervened in opposition. It was contended by Mr. Jesse W. Lilenthal, representing Mount Whitney Power and Electric Company, that the financial fabric and future prospects of Tulare County Power Company did not warrant an issue of bonds in the sum of \$300,000 as applied for. He argued that Tulare County Power Company was endeavoring to proceed upon a power rate of \$36 per horsepower per year to the holders of its consumers' stock, while, as he claimed, the Commission had found in a previous hearing that \$50 per horsepower was a reasonable rate. The reference was to the Opinion and Order of this Commission in Applications Nos. 81 and 104 and Case No. 268, in which San Joaquin Light and Power Corporation, Tulare County Power Company and Mount Whitney Power and Electric Company, were in controversy over territory to be served. In these cases the Commission was not engaged in establishing rates and I do not find anything therein that could be construed as a positive declaration by the Commission as to the reasonableness of the \$50 rate.

It was argued further, on behalf of Mount Whitney Power and Electric Company, that the \$36 per horsepower rate of Tulare County Power Company could not but result in a deficit with disastrous consequences. I find, however, that

the \$36 rate of Tulare County Power Company is intended to provide service at cost and that the contract for this \$36 rate contains a provision for the payment of an additional sum, if necessary, to cover the cost of the service.

The objections of Mr. McGahie covered the general financial standing of Tulare County Power Company. At the hearing a question was raised as to certain features of the hydroelectric project which Tulare County Power Company has under consideration. This objection, however, need not be considered in this case, as no part of the proceeds from the bonds applied for is to be devoted to the hydroelectric project.

I find after a careful review of the facts and the arguments for and against the application that it should be granted, and I submit herewith the following form of order:

#### ORDER.

Tulare County Power Company having applied to this Commission for an order authorizing the execution by said corporation of a certain mortgage and deed of trust, dated January 2, 1913, to Mercantile Trust Company of San Francisco, covering all its property to secure an issue of \$500,000, face value, 6 per cent. sinking fund bonds of the par value of \$500 each, maturing January 2, 1953; and for authority to sell or hypothecate \$300,000, face value, of said bonds; and for a further order of this Commission vacating the opinion and order of this Commission, dated September 25, 1912, authorizing said Tulare County Power Company to mortgage its property to Thomas C. Job; and a hearing having been duly held upon said application; and the Commission finding that the facts presented warrant the execution of said mortgage and deed of trust to Mercantile Trust Company and the cancellation of the previous order of this Commission empowering said Tulare County Power Company to mortgage its plant to Thomas C. Job; and that the bonds in the sum of \$300,000 now proposed to be issued are for purposes not in whole or in part reasonably chargeable to operating expenses or to income,



*It is hereby ordered*, by the Railroad Commission of the State of California, that Tulare County Power Company be authorized, and it is hereby authorized, to execute a mortgage and deed of trust, dated January 2, 1913, to Mercantile Trust Company of San Francisco, a copy of which is annexed to the Application and marked "Exhibit D," covering all its property to secure an issue of \$500,000, face value, 6 per cent. sinking fund bonds of the par value of \$500 each, maturing January 2, 1953, and that a certified copy of the same, when executed, shall be filed with this Commission.

*It is hereby ordered*, that the Railroad Commission of the State of California authorize, and it does hereby authorize, said Tulare County Power Company to sell, or pledge as collateral security for a loan, \$300,000, face value, of principal of said bonds on the terms and conditions hereinafter specified.

*It is further ordered*, that the Railroad Commission of the State of California does hereby vacate and nullify its previous order of September 25, 1912, in which Tulare County Power Company was empowered to mortgage its property to Thomas C. Job.

The bonds hereby authorized to be sold or pledged as security in the sum of \$300,000 shall be pledged or sold upon the following conditions and not otherwise:

I. Said bonds shall be pledged for not less than 75 per cent. of their face value and only after this Commission has approved the note for the payment of which they may be given as security.

II. Tulare County Power Company shall sell said bonds to net said company not less than 80 per cent. of the face value of the principal thereof and accrued interest thereon.

III. Tulare County Power Company shall, by March 1, 1914, raise from the holders of its stock in a manner to be approved by this Commission, the sum of \$15,000 and shall invest said sum in additions or betterments to its plant or system.

IV. The proceeds from the sale of said bonds shall be applied solely to the following purposes:

The discharge of notes payable, as filed by applicant with this Commission, with the exception of four notes given in payment of commissions for the sale of stock in the sum of \$3,500, or a total of....	\$153,181 61
For the discharge of accounts payable, as filed with this Commission .....	40,209 67
For the discharge of "vouchers and pay checks payable" as filed with this Commission.....	6,208 66
For transmission lines.....	60,000 00
Total .....	\$259,599 94

V. Said bonds shall not be sold until Tulare County Power Company shall have filed with this Commission a statement showing that no mortgage has been executed of any of its properties to Thomas C. Job.

VI. Said company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of bonds hereby authorized to be issued, and on or before the 25th day of each month, the company shall make verified reports to the Commission stating the sale or sales of said bonds during the preceding month, the terms and conditions of sale, the moneys realized therefrom and the use and application of such moneys, all in accordance with this Commission's General Order No. 24,\* which order, in so far as applicable, is made a part of this order.

VII. The authority hereby given to issue such bonds shall apply only to bonds issued by said company on or before the thirty-first day of December, 1913. This order will become effective on payment of fee as prescribed by section 57 of the Public Utilities Act.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 20th day of February, 1913.

\*Printed in Commission Leaflet No. 9, at page 82.

IN THE MATTER OF THE APPLICATION OF SAN DIEGO CONSOLIDATED GAS AND ELECTRIC COMPANY FOR AN ORDER AUTHORIZING THE ISSUANCE OF SIX PER CENT. DEBENTURE BONDS OF THE FACE VALUE OF FIVE HUNDRED THOUSAND DOLLARS AND THE EXECUTION OF AN INDENTURE TO CONTINENTAL AND COMMERCIAL TRUST AND SAVINGS BANK AND FRANK H. JONES, AS TRUSTEES, PROVIDING THE TERMS AND CONDITIONS UPON WHICH SAID BONDS ARE TO BE ISSUED AND THE RIGHTS AND SECURITY OF THE HOLDERS THEREOF.

Application No. 344—Decision No. 491.

*Decided March 8, 1913.*

**Authorization of Debenture Bonds—Proper Capital Charges—  
Declaration of Special Dividends—Difference between  
Actual Cost and Proceeds of Securities. [Ed.]**

By the terms of the trust deed, applicant may issue first mortgage bonds in an amount, par value, not to exceed 75 per cent. of the actual and reasonable cash cost of permanent extensions and additions to its property as the same existed on January 1, 1909. In financing the difference between the proceeds realized from the sale of bonds issued and the cost of such improvements, a floating indebtedness has been incurred as follows: Standard Gas and Electric Company, \$401,500; four San Diego Banks, \$100,000; C. C. Moore and Company, \$8,533.35; General Electric Company, \$36,511.82; accounts payable, \$163,152.92; total, \$709,698.09. In order to provide means for discharging said indebtedness in part, application is made for approval of execution of an indenture securing a total issue of \$3,000,000 six per cent. 10-year debenture bonds and of the sale at present of \$500,000 of such bonds at not less than 95 per cent. of their face value. To establish its right to issue such bonds, evidence was introduced by applicant showing an alleged excess of capital expenditures, over proceeds from the sale of securities, from January 1, 1909, to November 30, 1912, of \$824,024.53. Upon deducting certain items amounting to \$396,994.77 not properly subject to capitalization, and the amount of the proceeds to be derived from the sale of \$204,000 first mortgage bonds, previously authorized to be used to discharge the obligations incurred for new construction (Application No. 378), the entire surplus of proper capital expenditures, over receipts from security sales, found to be less than \$237,000, whereas in 1912 applicant paid out to Standard Gas and Electric Company, the parent corporation, special dividends in the amount of \$255,600.

*Held:* With respect to the certain items found not properly capitalizable: If a bond discount were capitalized by the issue of other bonds, the amount of bonds outstanding in any case in which the original bonds were sold at a discount would manifestly be in excess of the value of the property, a thing which this Commission will not permit. The expenses incurred in a municipal ownership campaign are not properly chargeable to capital account. Nothing has so far come of the investigation made by Lovell or the Warners Ranch power investigation. These items should certainly be held in suspense until they actually add to the value of applicant's property. The securities owned by applicant, as specified, also are not proper subjects for capitalization.

*Held:* While a strict policy might demand, in view of the declaration of the special dividend in excess of the sum of \$237,000, that no debenture bonds be authorized at the present time, that the effect of such a conclusion be limited to the moneys now due to the Standard Gas and Electric Company and that the debenture bonds sufficient only to pay the amounts now due to the four San Diego banks be issued. The Commission's attitude with reference to the issue of debenture bonds to cover the difference between the cost of additions and extensions, and the proceeds realized from the sale of securities, discussed.

*A. H. Sweet, for applicant.*

## REPORT.

*THELEN, Commissioner:*

This is an application for authority to issue debenture bonds of the face value of five hundred thousand (\$500,000) dollars, and to execute an indenture providing the terms and conditions upon which the bonds are to be issued, and the rights and security of the holders thereof.

In stating the purpose of the proposed issue, the application refers to the fact that under applicant's first mortgage, it can receive from the trustees bonds of a par value not to exceed in the aggregate 75 per cent. of the actual and reasonable cash cost to the company of permanent extensions and additions to its property as the same existed on January 1, 1909. The petition thereupon states that by reason of said provisions of its trust deed the petitioner has been compelled to make up from other sources the difference between the actual and reasonable cash cost to the company of such permanent extensions and additions to its property and 75 per cent. thereof, and, further, that the bonds of petitioner

issued under the terms of said trust deed have been sold at prices ranging from 93 to 94. The petition alleges "that in making up said difference between 75 per cent. and the actual cash cost of said permanent extensions and additions of and to its plants, properties and equipment, and the bond discount hereinabove referred to, your petitioner has been compelled to incur and has incurred a large floating indebtedness, which said floating indebtedness at this date amounts to the sum of \$635,432.65," which amount petitioner alleges has been expended for permanent additions and extensions to its plants, properties, and systems, and for bond discount over and above the amount of money realized by petitioner from the sale of its bonds. The petition then continues as follows:

"That in order to provide a means for financing the said difference between the price at which bonds can be issued and the actual cost of the permanent extensions and additions, and to cover bond discount, the board of directors of your petitioner deem it advisable for an issue of 6 per cent. debenture bonds."

The directors thereupon authorized the execution to Continental and Commercial Trust and Savings Bank and Frank H. Jones, as trustees, of an indenture to be dated as of December 1, 1912, providing the terms and conditions upon which debenture bonds in the total amount of three million dollars, bearing interest at the rate of 6 per cent. per annum, are to be issued from time to time for the purpose hereinbefore indicated. Application is now made for authority to issue bonds of the face value of five hundred thousand dollars (\$500,000) of this proposed issue.

An examination into the facts shows that applicant is not entitled to any issue of bonds on the theory thus stated by it. Since December 31, 1908, applicant has expended in permanent extensions and additions to its property an amount which it alleges to be \$2,839,547. During the same period it has sold bonds of the face value of \$1,775,000, from the sale whereof it has derived the sum of \$1,637,750. The difference between the construction cost and the cash derived from the sale of its bonds is \$1,201,797. Applicant desires also

to issue debenture bonds against certain items of personal property, such as wagons and horses, totaling \$92,764, which items are not covered by the first mortgage. By adding these two amounts we derive the total of \$1,294,561. It seems however, that applicant has derived from the sale of its capital stock since December 31, 1908, the amount of \$1,376,000, so that it has already by the sale of its capital stock made up more than the amount which it has failed to secure from the sale of its bonds delivered to it by its trustees. If applicant is entitled to issue the debenture bonds now applied for, it must accordingly be on some other theory.

At the hearing applicant relied on a statement of capital expenditures from December 31, 1908, to November 30, 1912, and all moneys derived from the sale of bonds and the sale of stock during the same period. According to this statement applicant has added to its capital expenditures since December 31, 1908, a total of \$3,837,774.53. During the same period it has derived from the sale of bonds the sum of \$1,637,750, and from the sale of stock \$1,376,000, making a total of \$3,013,750, and leaving an excess of capital expenditures over proceeds from securities from December 31, 1908, to November 30, 1912, of \$824,024.53. At the hearing applicant stated that it desired to issue its debenture bonds against a portion of this amount.

I desire now to draw attention to the following items which are included in the total of \$824,024.53:

Bond discount, March, 1909 .....	\$1,245 00
Redemption premium on first and refunding mortgage bonds, May, 1909 .....	30,000 00
Expenses in connection with municipal ownership campaign, August to November, 1910.....	12,520 84
Irrigation investigation expenses and services of Lovell, engineer, January, 1911 .....	3,695 26
Bond discount .....	303,859 04
Securities owned, consisting of shares of stock in Clyde Jackson Oil Company and San Diego-Panama-California Exposition and bonds of the University Club of San Diego.....	16,300 00
Warners Ranch power investigation.....	29,374 63
	<hr/>
	\$396,994 77

In my opinion, none of these items are properly capitalizable. If a bond discount were capitalized by the issue of other bonds, the amount of bonds outstanding in any case in which the original bonds were sold at a discount would manifestly be in excess of the value of the property, a thing which the Commission will not permit. The expenses incurred in a municipal ownership campaign are not properly chargeable to capital account. Nothing has so far come of the investigation made by Lovell or the Warners Ranch power investigation. These items should certainly be held in suspense until they actually add to the value of applicant's property. The securities owned by applicant, as hereinabove outlined, also are not proper subjects for capitalization.

In reaching this conclusion I am making no investigation into the construction expenditures as reported by applicant, amounting to \$2,932,311.71, and am also passing over several items as to which, though they are questionable, I am not prepared to say that they are not proper subjects for capitalization. By deducting the items hereinbefore specified from the sum of \$824,024.53, there remains the sum of \$427,029.76. From this amount should be subtracted the proceeds to be derived from the sale of \$204,000, face value, of first mortgage bonds, the issue whereof was authorized by this Commission in Application No. 378, by its order dated the eleventh day of February, 1913. These bonds were to be sold in part at 94 and in part at 95. The sale thereof would yield an amount in excess of \$190,000, thus leaving a total in excess of \$237,000 falling within this theory of applicant.

It becomes necessary now to refer to an extra dividend declared by applicant in 1912. Applicant's entire capital stock, with the exception of a few shares nominally in the hands of individuals for the purpose of qualifying them as directors, is owned by the Standard Gas and Electric Company, which company in turn is own by H. M. Byllesby & Company. During the year 1912 applicant declared a regular dividend of 7 per cent. on all its outstanding stock, both preferred and common. In addition thereto, applicant on January 30, 1912, authorized a special dividend of \$147,000, and on July 1, 1912, another special dividend of \$108,600,

making a total of \$255,600, which was paid by applicant in the year 1912 as special dividends. It should also be borne in mind in this connection, that in February, 1912, the board of directors exercised their prerogative in regard to calling in the preferred stock, amounting at that time to \$1,800,000. The articles of incorporation provide that the dividend on preferred stock should not exceed 7 per cent., and that it might be called in at any time at not more than 110. As no other securities have been issued to take the place of the preferred stock, it is not quite clear as to why the preferred stock was called in at a premium of \$10 per share. If the preferred stock had not been called in, a special dividend for the year amounting to more than 27 per cent. could have been declared. This dividend would have included accumulated earnings covering several years of operation. The dividend as declared was paid to Standard Gas and Electric Company, which company is applicant's largest creditor and also the owner of practically its entire capital stock. Applicant's business is increasing tremendously and the need for new funds to construct extensions is a pressing one. Why, under these circumstances, funds in the treasury to the amount of \$255,600—which funds might have been used to cover the difference between the cost of the new extension and the price received from the sale of first mortgage bonds issued against the same—were paid in the shape of dividends instead of being kept in the treasury to meet the company's obligations, is not quite clear to me. In case the applicant had confined itself to its regular 7 per cent. dividend there would now be available \$255,600 to meet its obligations, and the amount of debenture bonds or other securities for the issue of which applicant asks authorization, could be reduced by that amount.

At the hearing applicant filed a statement of the obligations which it desires to refund, as follows:

Due Standard Gas and Electric Company.....	\$401,500 00
Due to four San Diego banks which loaned \$25,000 each .....	100,000 00
Due to C. C. Moore & Company.....	8,533 35
Due to General Electric Company.....	36,511 82
Accounts payable .....	163,152 92
<b>Total .....</b>	<b>\$709,698 09</b>



From the proceeds of the \$204,000 first mortgage bonds, which bonds have now been authorized by this Commission, applicant can pay these obligations in excess of \$190,000, including all the accounts payable. Of the amounts due to C. C. Moore & Company, two sums of \$2,844.45 each are overdue, and have doubtlessly been paid. The four notes held by the San Diego banks are each due on March 18, 1913. In view of the fact that applicant had in its treasury \$255,600 which it might have used to pay off its obligations to that extent to its owner, the Standard Gas and Electric Company, but voluntarily chose to pay that amount to the Standard Gas and Electric Company in the shape of an extra dividend, I am not willing to recommend the issue of debenture bonds to cover this amount in so far as it represents moneys due to the Standard Gas and Electric Company. It will be noted that the entire surplus of proper capital expenditures over receipts from the sale of securities is less than \$237,000, whereas \$255,600 were paid out as an extra dividend. Nevertheless, the sum of \$237,000 or thereabouts includes the four notes due on the eighteenth of this month to the four San Diego banks. While a strict policy might demand, in view of the declaration of the special dividend, in excess of the sum of \$237,000, that no debenture bonds be authorized at the present time, I am willing to recommend that the effect of such a conclusion be limited to the moneys now due to the Standard Gas and Electric Company, and that the debenture bonds sufficient to pay the amounts now due to the four San Diego banks be issued. Applicant is of the opinion that its debenture bonds will sell for 95 or over. If they sell for 95, the net result of the transaction will be, that for a short term obligation of \$100,000 at 6 per cent., there will be substituted a ten-year obligation for some \$106,000 at 6 per cent. It will be noted that the amount of applicant's indebtedness will thereby be increased, and the margin between the value of its property and the total of its outstanding indebtedness thereby decreased. Applicant considers that the value of the physical portions of its plant is some five million dollars. The amount of bonds and other obligations now outstanding is some \$4,229,000. While

the margin thus appearing is sufficient to justify the issue of the debenture bonds hereby authorized, it is evident that applicant will shortly have to resort to some method of financing other than the issue of bonds alone. Applicant is now in such a flourishing financial condition that it ought to be able to increase its margin between the value of its property and its outstanding obligations by the issue of additional stock or by deferring for a time its dividends. Attention is drawn to these matters so that the utilities of the State may clearly realize the Commission's attitude with reference to the issue of debenture bonds to cover the difference between the cost of additions and extensions and the proceeds realized from the sale of securities, which often can be issued only up to a certain percentage of the cost of new property and extensions. The applicant in this case for every one dollar of new construction receives from the trustees bonds of the face value of 75 cents. If these bonds are sold at 95, applicant will derive therefrom  $71\frac{1}{4}$  cents. If applicant then desires to issue debenture bonds for the difference between the value of the property and the amount realized from the sale of the bonds, and if these debenture bonds will be sold at 95, it will have to issue some  $30\frac{1}{4}$  cents of debenture bonds to make up the difference. There will accordingly be outstanding against one dollar of additional property 75 cents of first mortgage bonds and  $30\frac{1}{4}$  cents of debenture bonds, making a total of  $\$1.05\frac{1}{4}$  bonds against  $\$1.00$  worth of property. This Commission, of course, will not authorize such an amount of obligations unless the entire amount of obligations outstanding is considerably less than the entire value of the property. It is clear that in ordinary cases it will not be long before an issue of  $\$1.05$  worth of obligations against  $\$1.00$  worth of new property will eat up the entire existing margin between the outstanding obligations and the percentage of the value of the property to which this Commission can safely authorize a public utility to issue bonds or other outstanding obligations.

I find that the moneys to be derived from the sale of the debenture bonds hereby authorized are not reasonably charge-

able to operating expenses or to income, and recommend the following form of order.

### ORDER.

San Diego Consolidated Gas and Electric Company having applied to the Railroad Commission of the State of California for the consent of the Commission to the issuance of debenture bonds by said company to the amount of five hundred thousand (\$500,000) dollars, face value, said bonds to be payable on the first day of December, 1922, unless sooner redeemed, and to bear interest at the rate of six (6) per cent. per annum, payable semi-annually, under and in pursuance of the terms of an indenture to Continental and Commercial Trust and Savings Bank and Frank H. Jones, trustees, to be dated as of the first of December, 1912, which indenture applicant asks authority to execute and deliver, and a public hearing having been held upon said application, and the Commission finding that the money to be procured by the issue of said bonds is necessary to and reasonably required by said company for the discharge and lawful refunding of obligations, as will hereinafter appear in greater detail, and that said purpose is not in whole or in part reasonably chargeable to operating expenses or to income,

*It is hereby ordered* as follows:

1. San Diego Consolidated Gas and Electric Company is hereby authorized to execute and deliver to Continental and Commercial Trust and Savings Bank and Frank H. Jones, as trustees, its certain indenture to be dated as of the first day of December, 1912, providing the terms and conditions upon which debenture bonds of a possible total issue of three million dollars are to be issued, and the rights and security of the holders thereof, substantially in the form attached to the application in this case, and designated Schedule No. 2.

San Diego Gas and Electric Company shall file with this Commission after execution a certified copy of said indenture as executed. Said Company, however, shall have no right or authority to issue any bonds pursuant to the terms of said indenture except as hereafter authorized by the Railroad Commission.

2. San Diego Consolidated Gas and Electric Company is hereby authorized to issue \$106,000, face value, of principal of bonds of said company, or so much thereof as may be necessary for the purposes hereinafter stated, maturing the first day of December, 1922, unless sooner redeemed, said bonds to be numbered one (1) to one hundred and five (105), inclusive, redeemable on any interest payment date prior to maturity by payment to the trustees of the principal sum and a premium of one (1) per cent. of such principal sum and the accrued interest then unpaid thereon, and to bear interest at six (6) per cent. per annum, payable semi-annually, on the first day of June and the first day of December in each and every year until the payment of the principal sum, under and in pursuance of the terms of the indenture hereby approved to be made and executed by said San Diego Consolidated Gas and Electric Company to Continental and Commercial Trust and Savings Bank and Frank H. Jones, as trustees, upon the following conditions and not otherwise, to wit:

(a) San Diego Consolidated Gas and Electric Company shall sell said bonds hereby authorized so as to net the said company not less than 95 per cent. of the face value of the principal thereof, beside interest accrued thereon.

(b) The proceeds from the sale of said bonds shall be used only for the discharge or refunding of obligations of the company heretofore incurred for purposes properly chargeable to capital account and evidenced by the four following promissory notes:

1. Promissory note of San Diego Consolidated Gas and Electric Company dated November 18, 1912, payable March 18, 1913, to the order of American National Bank of San Diego..... \$25,000 00
2. Promissory note of San Diego Consolidated Gas and Electric Company dated November 18, 1912, payable March 18, 1913, to the order of Merchants National Bank ..... 25,000 00
3. Promissory note of San Diego Consolidated Gas and Electric Company dated November 18, 1912, payable March 18, 1913, to the order of the First National Bank ..... 25,000 00
4. Promissory note of San Diego Consolidated Gas and Electric Company dated November 18, 1912, payable

3. San Diego Consolidated Gas and Electric Company shall keep separate, true, and accurate accounts, showing the receipt and application in detail of the proceeds of the sale of the bonds hereby authorized to be issued, and on or before the twenty-fifth day of each month the company shall make verified reports to the Railroad Commission, stating the sale or sales of said bonds during the preceding month, the terms and conditions of sale, the moneys realized therefrom, and the use and application of such moneys, all in accordance with this Commission's General Order No. 24,\* which order in so far as applicable is made a part of this order.

4. The authority hereby given to issue bonds shall apply only to bonds issued by said company on or before the thirtieth day of June, 1913.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 8th day of March, 1913.

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THE BOARD OF TRUSTEES OF THE TOWN OF FAIRFIELD vs.  
SOUTHERN PACIFIC COMPANY AND TOWN OF SUISUN CITY.

Case No. 263—Decision No. 498.

*Decided March 12, 1913.*

Inadequate Service—Relocation of Station—Effect of Contract—  
Effect on Local Interests. [Ed.]

The towns of Suisun and Fairfield adjoin. Defendant railroad maintains a station in Suisun, and passengers to or from Fairfield are obliged to leave or board trains at said station, necessitating a trip of about one mile. Defendant railroad recently constructed a small shelter shed in Fairfield, where it stops only two trains a day, and thus affords some kind of passenger service, but no provision is made for the receipt and delivery of

\*Printed in Commission Leaflet No. 9, at page 82.

freight in less than carload lots at that point. Complainant prays for an order directing defendant railroad to erect and maintain a passenger and freight depot within the limits of Fairfield for which purpose the citizens of said town propose to donate a block of land. Defendant railroad prays for an order permitting it to establish and maintain a freight and passenger station at or near the intersection of its main tracks with Union avenue in Suisun near Fairfield, and to abandon the present station facilities at Suisun. Defendant town of Suisun asks for a continuance of the depot at its present location, basing its request upon the present needs and requirements of the town as well as on the terms of a contract entered into in 1877 wherein, in consideration of securing a free right of way, a predecessor of defendant railroad agreed to establish and maintain a station at or near Suisun City.

*Held:* With respect to the contract relied upon by the town of Suisun, that the principle laid down in 33 Cyc. 143 is applicable, to wit: "The right to change the location of a station in a particular case cannot be controlled or prevented by contract" \* \* \* "or by the fact that private citizens in expectation of the continuation of a station at a particular place have made donation of land or money to the railroad company" \* \* \* "or purchased property or established business enterprises in the vicinity of the original location." *Atlantic, etc., Company vs. Camp*, 130 Ga. p. 1, 60 S. E. 177, also cited.

*Held:* It is the duty of the Commission to see that the general public is reasonably and adequately served with transportation facilities, and it must require the installation and maintenance of those facilities which are best calculated to serve the needs and requirements of the entire community, regardless of its effect on the property values of one particular section, or the desire of any locality as against another to enjoy some trade advantages by reason of a depot's being located in its immediate vicinity.

*Held:* That the convenience and necessity of the public do not demand at the present time the location of one depot at Suisun and another in Fairfield, but that a depot of defendant railroad at Suisun should be located at or near the junction of Union avenue and its main line tracks at Suisun, at which point said depot will more adequately and reasonably serve the public, including the communities of Suisun and Fairfield, than at its present location.\*

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\*Syllabus prepared by the Commission.

## CONNECTICUT.

### Public Utilities Commission.

IN RE PETITION OF I. S. SPENCER'S SONS, INC., ET AL., *vs.*  
HOUSATONIC POWER COMPANY.

Docket No. 653.

*Decided April 17, 1913.*

### Inadequate Service—Reasonableness of Rates—Causes of Poor Service—Improper Line Construction.

Upon complaint as to the electric lighting service and rates of The Housatonic Power Company in the Town of Guilford, the Commission found that the service was inadequate and that the rates charged were not necessarily exorbitant for proper service but were excessive for the kind of service being rendered.

The Commission made no order as to rates, holding that the consideration of this question should be deferred until proper service was rendered in accordance with the order to be issued.

With respect to the service, the Commission found among other things, that the condition of the pole lines was dangerous to public safety and indicated the necessity of replacement and general reconstruction.

The respondent was ordered to make such permanent improvements as might be necessary to the maintenance of an adequate electric lighting and power service in the Town of Guilford; to maintain an established standard of service free from fluctuations and interruptions; to eliminate all avoidable dangerous conditions upon its transmission lines; and to relocate, or secure and insulate wires likely to come into contact with trees, poles, wires or other objects.\*

### FINDING.

This petition, brought by ten patrons of The Housatonic Power Company, alleging that the electric lighting service rendered by such Company in the Town of Guilford is unsatisfactory and that the charges are exorbitant, was assigned for a hearing at the Town Hall, in the Town of Guilford, on

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\*Editor's headnote.

Tuesday, March 13, 1913, at 12:30 o'clock p. m., of which due and legal notice was given to all parties in interest and at which time and place the petitioners and the respondent company appeared with their witnesses and counsel and were fully heard.

The Housatonic Power Company owns and operates, as part of its properties, an electric lighting plant in the Towns of Branford and Guilford designated by said Company as the Branford Division, and which plant was formerly owned and operated by The Branford Lighting and Water Company. In the annual report of The Housatonic Power Company, on file in the office of the Commission, there is no division or separation showing the value of plant and cost of operation or income received for the Branford Division.

The petitioners presented a number of witnesses, patrons of the respondent Company, who testified as to the character of service rendered, claiming that by reason of low voltage, leakage, insufficient power and other plant and maintenance defects, the electric lights were dim, at times flickering or flashing, and that frequently there were no lights; that the Company failed and neglected, because of inadequate plant and equipment, to supply current for moderate power purposes on request, and that the rates charged were unreasonable for the character of the service rendered.

Subsequent to the date of hearing, the Commission had a careful inspection made of the plant and equipment of the respondent Company, including a voltage test of a number of services.

From the facts obtained in connection with this petition, the Commission is of opinion and finds that the service rendered by the said Company in the Town of Guilford is inadequate and unsatisfactory, and is also of opinion that the rates charged for the character of the service rendered at the time of the hearing, were excessive, but does not find from the facts that the rates prescribed by the Company are or necessarily would be exorbitant for proper service. The Commission is inclined to make no order pertaining to rates at this time, believing that the Company should first supply proper service as hereinafter ordered, and that the question



of rates may later be considered, if necessary, on the basis of such proper service.

From the evidence submitted and from the inspection made of the plant and equipment, we find the following facts:

With the exception of occasional instances of recent construction, the lines are very old and apparently indifferently maintained. Both poles and wires in most instances indicate the need of replacement and general reconstruction in accordance with modern methods. Many of the poles are rather frail for substantial service and show the unmistakable effect of long usage. The insulation on the wires, or rather the prevailing absence of it being the rule, indicates their age or overloading—probably both. Instances of wires, bare or nearly so, passing through trees, supported by insulators of questionable insulating value, attached to limbs, frequently appear, and suggest the liability of tree grounds and swaying contracts, which, in accumulation, would account for considerable leakage or loss of electrical energy during damp weather, rain and wind storms, particularly in consideration of the primary electrical transmission thus provided for at the stated potential of 2,300 volts.

Such line conditions are improper and may be considered as contributory, not only to the unsatisfactory service complained of, but to a considerable loss to the company supplying service. Aside from this, public safety may be thus rendered insecure, inasmuch as dangerous stray electrical currents, by reason of such contacts, are likely to be transmitted to telephone wires, and to low potential lighting or power wires or other objects.

The regular lighting service potential for Guilford is 115 volts. On April 3rd, 1913, the Commission had voltage tests made after dark of the commercial lighting service in eight different places in the more thickly settled section of Guilford. These readings covered a period of an hour and five minutes and showed a efficiency, from the standard voltage of 115, ranging from a minimum loss of three volts at the highest reading of 112 volts, to a maximum loss of seven volts at the lowest reading of 108 volts. These deficiencies, however, were not readily noticeable in the light value of

Tungsten lamps, but the voltage at the time these tests were made may have differed from the low voltage complained of at and prior to the date of the hearing.

The foregoing improper conditions indicate that they may be due to any one, or a combination of all the following causes:

1. Insufficient generating capacity at the power house during heavy demands on the service.

2. Transmission lines inadequate to deliver sufficient electrical energy to properly serve the maximum requirements of Guilford, in consideration of the small conductors used and the considerable distance of the section of heavy lighting in Guilford from the power house in Branford, also taking into account the comparatively low primary potential for such distance with the bulk of the load largely near the far end.

3. Leakages by contact of the transmission lines with trees and other objects, whereby a portion of the electrical energy is lost en route by reason of inadequate insulation and faulty construction.

4. Insufficient transformer capacity at points of transformation from primary to secondary distribution.

5. The attachment of motor service of fluctuating and intermittent demand and such sudden, heavy and varying requirements as moving picture apparatus, to secondary lines not originally calculated for such use.

Based upon the foregoing facts, the Commission determines that it is equitable in the premises to pass, and does hereby pass the following order:

### ORDER.

**FIRST:** The Housatonic Power Company is hereby ordered, required, and directed, on or before the first day of September, 1913, to make and put into operation for regular service, permanent improvements to its electrical generating, transmission, transformation and distributing equipment, as may be found necessary to supply and maintain an adequate and reliable electric lighting and power service for the inhabitants

of the Town of Guilford, at an established standard of secondary or house service voltage—to be decided upon by said Company and made known by it to all of its patrons and thereafter adhered to—of such uniformity under all regular operating conditions, as shall yield the full ratio of candle power or capacity of lamps and other electrical devices suitable to and intended for such voltage, and that such voltage and service shall be kept as free from all variations, fluctuations and interruptions as may be avoided by said Company through the medium of proper equipment, maintenance and operation of its plant.

SECOND: The Housatonic Power Company is hereby ordered, required and directed on or before the first day of September, 1913, to permanently eliminate all avoidable dangerous conditions relating to its electrical transmission lines now existing in and upon the public highways and public property in said Branford Division, which in any way may jeopardize, or are liable to jeopardize public safety.

Wherever any of its wires in said Branford Division are so located as to be, or likely to come in contact with, trees, branches, poles or other wires or objects whereby the safety of life or property is endangered, and by which good electrical service is menaced, that all said wires be removed and properly relocated wherever practical. In instances where such removal is not practical said wires must be permanently secured and held away from all trees, branches, poles and other objects, including all electrical lines and conductors not intended to receive the electricity conveyed by said wires, by means of substantial holding devices, which will also thoroughly insulate said wires against any leakage of electricity from same to said trees, branches, poles or other objects.

We hereby determine and direct that notice of the foregoing decree be given to ten signers of said petition and to The Housatonic Power Company by forwarding to each by registered mail, true and attested copies thereof, on or before the 17th day of April, 1913, and due return made hereon.

Dated at Hartford, Conn., this 17th day of April, A. D. 1913.

## GEORGIA.

### Railroad Commission.

#### IN RE RATES OF MACON RAILWAY AND LIGHT COMPANY.

File No. 10979.

*Dated March 14, 1913.*

#### Filing of Reduced Rates—Maximum Rates. [Ed.]

The Commission has received from a citizen of Macon a printed circular entitled "Special Announcement" by your company in which, effective March 1st, commercial rates for light and power and residence lighting rates are given. The Commission takes it that these are reductions from your rates existing prior to March 1st. The Commission desires to state that these rates have not been filed with it by your Company as required by the Commission's rules. In this connection, the Commission would call your attention to its General Rules Nos. 1\*, 2\*, 3\* and 4†, and to its General Order No. 14‡, the last making reduced rates put into effect by any Company the maximum rates of the Commission thereafter, and providing that they cannot thereafter be exceeded at any time unless with the approval of the Commission first obtained.

This letter is written you because the citizen who sent the Commission the new rate announcement desired information of the Commission as to their permanency.§

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\*See II Commission Telephone Cases, 15.

†See II Commission Telephone Cases, 16.

‡See II Commission Telephone Cases, 12.

§Informal ruling contained in a letter of the Commission, dated March 14, 1913. and issued over the signature of the Chairman of the Commission.

# KANSAS.

## Public Utilities Commission.

IN THE MATTER OF THE APPLICATION OF THE ELECTRIC PLASTER COMPANY AND OF MESSRS. HUNTER, HAM AND STRONG FOR PERMISSION TO SELL, AND OF THE MARSHALL COUNTY POWER AND LIGHT COMPANY FOR PERMISSION TO BUY CERTAIN PROPERTIES.

Docket No. 577.

*Decided April 10, 1913.*

Application Denied for Lack of Jurisdiction. [Ed.]

### APPEARANCES:

*J. G. Strong* for applicants.

*W. W. Redmond* for City of Blue Rapids.

*J. M. Stark* for Jesse Axtell. (Creditor.)

### ORDER.

Now on this 10th day of April, 1913, the above entitled matter comes on to be heard at the offices of the Commission in the City of Topeka, and the Commission after hearing the evidence does find that the Marshall County Power and Light Company is now operating an electric light plant, situated wholly within the city of Blue Rapids, in Marshall County, Kansas, and the same is at this time operated principally for the benefit of such city and its people\*, and does further find that the said Commission does not have control over the said electric light plant, as now operated.

\*Cf. *City of Kinsley vs. The Kinsley Automatic Telephone Company*, decided February 27, 1912, printed in Commission Leaflet No. 3, at page 3. —Ed.

*It is therefore by the Commission ordered,* That the application of the said Marshall County Power and Light Company be dismissed for the reason that the said Commission does not have control over the said light plant, to which order of the Commission the City of Blue Rapids duly excepts, and to which order of the Commission the said Marshall County Power and Light Company duly excepts.

## MARYLAND.

### Public Service Commission.

IN THE MATTER OF THE COMPLAINT OF ALBERT M. GRIFFIN.  
ET AL., *vs.* NORTHERN CENTRAL RAILWAY COMPANY.

Case No. 555—Order No. 1136.

*Decided April 7, 1913.*

#### Inadequate Service—Discrimination against Interstate Commerce—Interference with Interstate Commerce—Jurisdiction of Commission—Additional Service.

Upon complaint as to the local train service between Baltimore and certain points north, asking for changes in the train schedule, the Commission found that the service afforded was inadequate, but that to make all the changes proposed would disarrange the existing schedules to an extent which the local traffic would not justify. It appeared, among other things, that it was the practice to side-track local train No. 200, for the purpose of allowing certain interstate trains to pass, whenever the latter trains were late. The Company contended that inasmuch as these were interstate trains, the Commission could not interfere with the Company's management of them or curtail its right to give them the preference over local traffic.

*Held:* That the published train schedule is a contract with the public, and the fact that a through train is late does not give its passengers a right to consume the time assigned to a local train and to subject the local passengers to inconvenience and delay for causes for which the local train is in no manner responsible.

That a train on time is entitled to precedence over a train that is delayed, and the fact that the delayed train is an interstate train does not alter the relative rights of passengers; and that the Company's practice in side-tracking train No. 200 is a discrimination in favor of interstate passengers which violates every canon of justice and is without warrant in law;

That an order of a state commission directing a railroad company to operate its local trains on schedule time is a proper exercise of its power and is not a regulation of interstate business, although it may incidentally result in somewhat prolonging the delay of an interstate train.

*Ordered,* among other things, That the Northern Central Railway Company cease from detaining train No. 200 in order to give the right of way to through or interstate trains which have been delayed at points beyond the point of origin of train No. 200; and that this provision shall apply generally to local trains operated by the Company.\*

\*Editor's headnote.

## OPINION.

LATED, *Chairman:*

This is a petition signed by sixty-six persons residing along the road of the Northern Central Railway Company at points between Cockeysville and Parkton, "dependent on the trains of the said Railway Company for transportation to their places of business," praying for better train service. The stations interested in the petition, counting from Baltimore northward, are Ashland, Phoenix, Sparks, Glencoe, Corbett, Monkton, Blue Mont, White Hall, Graystone and Parkton.

The petition alleges that "to make the service what it should be would necessitate the said Railroad Company making Parkton the terminus for all local trains instead of Cockeysville, but if they have good reasons for refusing to do that, we ask that they be compelled to make the following changes in their schedule:

1. Start train No. 100 from Parkton, arriving at Calvert Station at 6.45 a. m.
2. Start train No. 104 from Parkton, arriving at Calvert Station at 7.45 a. m.
3. Make the "Milk Train" No. 200 Express from Cockeysville to Baltimore, putting off at Cockeysville passengers for intermediate points.
4. Make train No. 205 Express to Cockeysville and then local to Parkton.
5. Add one additional accommodation train to Parkton, leaving Baltimore about 9.30 p. m. and return.

The Company alleges in its answer: "That the changes in its train service between the city of Baltimore and Parkton asked for by the complainants are of such a character that they could not be made without such interference with passenger service on its lines, both through and local, as would cripple that service and do great injustice not only to its through traffic but to its local traffic to stations other than those between Cockeysville and Parkton, referred to in the complaint aforesaid, besides involving a great expense in addition to that of its present



service, which would not be justified by any possible return from the service demanded."

A hearing was held March 13th, 1913, and from the evidence it was made quite clear that to grant all that was asked for would dislocate the existing schedule of passenger and freight traffic to an extent which the local traffic from points between Parkton and Cockeysville would not justify, but it was also quite clear that the present accommodation is inadequate. The morning service from Cockeysville has trains No. 100 at 6.00, due at Calvert Station at 6.45; No. 104 at 7.10, due at 7.50; No. 200 at 7.38, due at 8.20; No. 70 at 8.04, due at 8.45, and No. 108 at 9.00, due at 9.40. From Parkton the present service is train No. 200 at 6.50, due at 8.20, and No. 70 at 7.31, due at 8.45. The evidence establishes the fact that there are a member of persons residing in the Cockeysville-Parkton section who are engaged in business in Baltimore who need an earlier train than No. 200, that reaches the city at 8.20, and that even those who might be accommodated by this train are seriously inconvenienced by the further fact that No. 200 is rarely on time because it is side-tracked to let through trains No. 38 and No. 60 pass when those trains are behind time.

The Commission, after careful consideration, is of the opinion that to grant all of the changes asked for would disarrange the present schedules to an extent that the traffic on the Cockeysville-Parkton section of the road would not justify, and in detail found as follows:

1. That it is practicable to start train No. 100 at Parkton at about 5.30 a. m., instead of at Cockeysville at 6.00 a. m., its time of arrival at Calvert Station to be 6.45 as at present.

2. That it is impracticable to start No. 104 at Parkton and maintain its present time of arrival at Calvert Station, because it would seriously interfere with the operation of through train No. 60, and either delay that train or furnish irregular and unsatisfactory service on No. 104, itself.

3. That train No. 200—the "Milk Train"—should be run on its schedule time and should not be side-tracked to let No. 38 and No. 60 pass when those trains are late. This

matter is deferred, for discussion, in a subsequent part of this opinion.

4. That it is impracticable to make train No. 205, leaving Calvert Station at 5.10 p. m., an express to Cockeysville and then local to Parkton. This train has been operated for a great many years and is used more than any other train on the road. The bulk of the traffic on it is between Baltimore and Cockeysville, and in our judgment it should not be disturbed except for imperative reasons. To comply with the petition would require the operation of an extra local train to accommodate the Baltimore-Cockeysville traffic at this hour, and while such a train might follow No. 205 at a short interval of time and not seriously delay the time of arrival at destination, it would involve crowding the road and the expense of extra service to a degree which, as at present advised, we do not think the Cockeysville-Parkton traffic would justify.

5. That the present night service to Parkton is inadequate, being composed of train No. 207, leaving Calvert Station at 7.20 p. m., and train No. 3, leaving at 11.54 p. m. There are a number of persons who are detained in Baltimore by business and social engagements beyond the time of departure of No. 207, and No. 3 does not arrive at Parkton until 12.49 a. m. At present there is a train No. 121, which leaves Calvert Station at 10.30 and runs as far as Cockeysville. The Commission found it practicable to extend the run of this train to Parkton, with a possible change of its time of departure to an earlier hour.

After the Commission had reached these conclusions the Company made the following offer through its solicitor:

The Northern Central Railway Company respectfully shows:

1. That since the above-mentioned complaint was filed, this Company's officers have endeavored to work out a plan that would give additional accommodation to travelers to and from Baltimore city using stations between Parkton and Cockeysville, with due regard to local travel at Cockeysville and points south, and to the through travel over the Company's lines and its freight traffic.

2. That the only changes it has found are practicable are as follows, viz:

I. Southward—Start train No. 100 from Parkton (instead of from Cockeysville) at 5.30 a. m., stopping at points between Parkton and Cockeysville and running from Cockeysville to Baltimore on its present schedule, reaching Calvert Station at 6.45 a. m.

II. Run train No. 121 (which now ends its run at Cockeysville) to Parkton, leaving Baltimore at about 10.00 p. m. and reaching Parkton at about 11.30 p. m., stopping at stations between Cockeysville and Parkton.

III. Such changes to be made at the time of the general spring change of schedule toward the latter part of May in order to avoid the great expense of issuance of new time tables in the short interval, and the difficulties attending a mere partial readjustment of train service during said interval.

3. That this Company accordingly now undertake by way of satisfaction of the said complaint to make the changes in the last paragraph mentioned at the time therein set forth.

4. That these are the only changes that this Company can make in the premises with a due regard to its duties as a common carrier toward its passengers generally, both through and local, and its shippers, through and local.

WHEREUPON this Company prays this Honorable Commission to accept its said undertaking herein as a satisfaction of said complaint, and accordingly to dismiss the said complaint.

Inasmuch as this offer as to trains Nos. 100 and 101 is in accord with the Commission's findings and is also acceptable to the complainants, we have no hesitation in approving it. It is not quite clear, however, whether these changes are to be made only upon the condition that no further obligation is to be imposed upon the Company in relation to the operation of its trains. We infer that this is what the Company means, and in view of the insistence of the Complainants that train No. 200 be run upon its schedule time and the Commission's finding that this should

be done, we are unwilling to accept the Company's offer if it is intended thereby to leave the present irregular service of that train as a permissible practice of operation, and thus tacitly to acquiesce in a condition that ought not to continue and to appear to concur in the Company's view that interstate trains are entitled as a matter of right or of law to a preference over local trains.

We, therefore, recur to train No. 200, generally known as the "Milk Train." It is obvious that while the operation of No. 100 from Parkton instead of from Cockeysville will afford substantial relief to those patrons of the road who are under the necessity of reaching the city at an early hour, it does not afford relief to those patrons whose business does not require them to be in their offices so early and who would be amply accommodated if No. 200 were run upon its schedule time. The fact that a train scheduled to arrive at a definite hour and, in addition to its passengers, carrying a commodity of prime necessity to a great city is rarely on time presents a condition that ought to be corrected if it is possible to do so.

As briefly stated above, the cause of its delay is the detention north of Parkton of trains No. 38 and No. 60, No. 200 being held at Parkton or side-tracked on its way to the city to let them pass. The intimation was thrown out at the hearing that as these were interstate trains this Commission had no control over them and could not interfere with the Company's management of them or curtail its right to give them the preference over local traffic.

This Commission is not prepared to concede that this position is sound. It is freely admitted that an order of this Commission the necessary and inevitable effect of which would be to interfere with the operation of an interstate train on its published schedule time, where the present facilities for local traffic are otherwise adequate, would be an assumption of power which it does not possess, but that an interstate train which, for causes beyond the control of the local road and with which the conditions of local traffic had nothing to do, is delayed behind the time allotted to it on the published schedule is entitled to take the time allotted to local trains, dislocate the local traffic

and seriously interfere with the convenience and business of local patrons of the road is a proposition fraught with so much injustice and discrimination that we feel called upon to combat it.

The position of this Commission is that the train schedule published by the Railway Company is the contract which the Company makes with the public to place them at destination at a given time. The schedule is arranged to provide for through traffic and local traffic, and if the proper and necessary running time of the respective kinds of traffic is maintained, there is no interference with either. The time allotted to a particular train belongs to it to the exclusion of all others, and the passengers on that train are entitled to be carried to their destination upon the schedule time. The fact that a through train is late does not give its passengers a right to consume the time assigned to a local train and subject the passengers on the latter to the inconvenience and loss of delay for causes for which the local train is in no manner responsible.

In the present case, as the evidence shows, local train No. 200 is held back or side-tracked to allow No. 38 and No. 60 to make up time that was lost in territory beyond the Baltimore Division, or at least beyond the point of origin of No. 200. In our judgment, when this condition exists No. 38 and No. 60 have lost their right to occupy the track between Parkton and Baltimore during the time when the track has been assigned to the local train. In other words, the train on time and at its proper place is entitled to precedence over a train that is delayed and out of place. The fact that the delayed train is an interstate train does not alter the relative rights of passengers. The two classes of passengers—interstate and local—have the same rights to the facilities of the Company and together constitute the public to be served. The service is given in accordance with rules and schedules which are intended to treat all alike, without discrimination. To say that "A," on an interstate train delayed by accident at some remote point, has the right to displace "B," on a local train, who is where, according to the Company's schedule, he is entitled to be, seems to us

to establish a practice of discrimination in favor of interstate passengers which violates every canon of justice and is without warrant in law. The Company must adhere to its time table to the utmost extent possible. If an interstate train is delayed, it becomes impossible to run it according to the time table. But other trains can be run on time and to the extent that this *can* be done it *should* be done. An order of a State Commission directing a railroad company to operate its local trains on schedule time would be a proper exercise of power. It would not be a regulation of interstate commerce, although its effect might be to somewhat prolong the delay of an interstate train, because such effect would be incidental and accidental, the real cause of which originated at remote points upon connecting lines.

This position is fully sustained, we think, by decisions of the Supreme Court of the United States upon kindred issues.

In *Lake Shore & M. S. Ry. Co. vs. State of Ohio*, 173 U. S., 285; 19 S. C., 464, a statute of the State of Ohio required railroads to cause three, each way, of its regular trains carrying passengers, if so many are run daily, Sundays excepted, to stop at a station, city or village containing over three thousand inhabitants. In some cases the trains affected by the law were interstate trains and the Company resisted its enforcement upon the ground that it attempted to regulate commerce between the States. The Supreme Court, however, held otherwise and sustained the law as a proper exercise of police power by the State. The opinion of Mr. Justice Harlan cites a number of cases which we do not think it necessary to review. After quoting from *Cooley*, *Const. Lim.* (6th Ed.) p. 715, as follows—

“It cannot be doubted that there is ample power in the legislative department of the State to adopt all necessary legislation for the purpose of enforcing the obligations of railway companies as carriers of persons and goods to accommodate the public impartially, and to make every reasonable provision for carrying with safety and expedition”—Judge Harlan says: “It is not contended that the statute in question is repugnant to the Constitution of the United States when applied to railroad trains carrying passengers

between points within the State of Ohio. But the contention is that to require railroad companies, even those organized under the laws of Ohio, to stop their trains or any of them carrying interstate passengers at a particular place or places in the State for a reasonable time so directly affects commerce among the States as to bring the statute, whether Congress has acted or not, on the same subject, into conflict with the grant in the Constitution of power to regulate such commerce. That such a regulation may be in itself reasonable, and may promote the public convenience or subserve the general welfare, is, according to the argument made before us, of no consequence whatever; for it is said a State regulation, which to any extent or for a limited time only interrupts the absolute, continuous freedom of interstate commerce is forbidden by the Constitution, although Congress has not legislated upon the particular subject covered by the State enactment. If these broad propositions are approved, it will be difficult to sustain the numerous judgments of this Court upholding local regulations which in some degree or only incidentally affected commerce among the States, but which were adjudged not to be in themselves regulations of interstate commerce, but within the police powers of the States and to be respected so long as Congress did not itself cover the subject by legislation. *Cooley vs. Board*, 12 Howard, 299, 320; *Sherlock vs. Alling*, 93 U. S., 99, 104; *Morgan's Louisiana & T. B. R. & S. S. Co. vs. Louisiana Board of Health*, 118 U. S., 455, 463, 6 Sup. Ct., 1114; *Smith vs. Alabama*, 124 U. S., 465, 8 Sup. Ct., 564; *Nashville C. & St. L. Ry. Co. vs. Alabama*, 126 U. S., 96, 100, 9 Sup. Ct., 28; *Hennington vs. Georgia*, above cited; *Railway Co. vs. Haber*, above cited; and *New York, N. H. & H. R. Co. vs. New York*, 165 U. S., 628, 631, 632, 17 Sup. Ct., 418, were all cases involving State regulations more or less affecting interstate or foreign commerce, but which were sustained upon the ground that they were not directed against nor were direct burdens upon interstate or foreign commerce, and having been enacted only to protect the public safety, the public health, or the public morals, and having a real, substantial relation to the public

ends intended to be accomplished thereby, were not to be deemed absolutely forbidden because of the mere grant of power to Congress to regulate interstate and foreign commerce, but to be regarded as only incidentally affecting such commerce, and valid until superseded by legislation of Congress on the same subject."

Mississippi Railroad Commission vs. Illinois Central Railroad Company, 203 U. S., 335, 27 S. C., 90, involved the validity of an order of the State Railroad Commission requiring the Company to stop certain interstate trains at Magnolia. The case was decided in favor of the Railroad Company upon the ground that proper and adequate railway passenger facilities were otherwise afforded that station. At page 93 of 27 S. C., Justice Peckham says: "The main question is, as stated in the court below, whether the order of the Commission is valid with reference to the Federal Constitution. That depends upon the question whether it is only an incidental interference with interstate commerce, based upon a legal exercise of the police powers of the State for the purpose of securing proper and sufficient accommodation from the railroad company for facilities for residents of the State."

After citing a number of cases he says: "Upon the principles decided in these cases, a State railroad commission has the right, under a State statute, so far as railroads are concerned, to compel a company to stop its trains under the circumstances already referred to, and it may order the stoppage of such trains if the company does not otherwise furnish proper and adequate accommodation to a particular locality, and in such cases the order may embrace a through interstate train actually running, and compel it to stop at a locality named. In such case, in the absence of Congressional legislation covering the subject, there is no illegal or improper interference with the interstate commerce right. \* \* \* The transportation of passengers on interstate trains as rapidly as can with safety be done is the inexorable demand of the public who use such trains. Competition between great trunk lines is fierce and at times bitter. Each line must do its best even to obtain its fair



share of the transportation between States, both of passengers and freight. A wholly unnecessary, even though small, obstacle ought not, in fairness, to be placed in the way of an interstate road which may be unable to meet the competition of its rivals. We by no means intend to impair the strength of the previous decisions of this Court on the subject, nor to assume that the interstate transportation, either of passengers or freight, is to be regarded as overshadowing the rights of the residents of the State through which the railroad passes to adequate railroad facilities. Both claims are to be considered, and after the wants of the residents within a State or locality through which the railroad passes have been adequately supplied, regard being had to all the facts bearing upon the subject, they ought not to be permitted to demand more at the cost of the ability of the road to successfully compete with its rivals in the transportation of interstate passengers and freight."

These are the strongest expressions we have been able to find to sustain the contention of the respondent Company in respect to the movement of its interstate trains. But they are not in conflict with the Lake Shore case and expressly recognize the equal rights of local passengers. The duty of the Company to "furnish proper and adequate accommodation to a particular locality," which is here recognized, is all that this Commission insists upon. We include, as falling within that duty, the obligation to carry its passengers to their destination upon published schedule time.

The particular train which we have in view, No. 200, has a short run of 28.8 miles from Parkton to Baltimore, occupying an hour and a half, and arriving at 8.20 in the morning. For the majority of commuters, if the schedule is maintained, ample time is afforded for passengers to get from the station to their several places of business. In addition to this it brings to the city daily thousands of gallons of milk, an article of prime necessity, upon which a very considerable part of the city population depends, and the prompt delivery of which is a matter of much importance to many families. There is nothing in the time

table, nothing, in fact, except an accident to the train itself, that could delay it beyond its schedule time of arrival in the city. The extent to which it is interfered with is disclosed by the record of arrival of trains Nos. 38 and 60 from December 1, 1912, to March 31, 1913, furnished by the Company. During that period No. 38 made 116 runs, and was on time 33 times, and late 83 times, and No. 60 made 121 runs, and was on time 29 times, and late 92 times. Some of the delays, it is true, were of insignificant duration, but it is quite apparent that the disturbance of No. 200 was so frequent and so pronounced as to seriously inconvenience patrons of the road to whom prompt arrival at their places of business was a matter of great importance. Delayed interstate trains, which Mr. Hess, the passenger trainmaster of the Company, described as "irregular trains," should not be permitted to displace No. 200 to the injury and inconvenience of its passengers.

The Company recognizes this in some degree by providing an extra train from Cockeyville whenever No. 200 is delayed by the movement of No. 38 and No. 60. But this is probably "unjust and unreasonable discrimination" against Parkton, in favor of Cockeyville passengers who would be otherwise compelled to wait in a station until the arrival of No. 200. It is difficult to distinguish between having to wait in a station or in a train on a siding. The running of No. 200 on its schedule time will, at one and the same time, remove the discrimination now practiced in favor of interstate passengers and passengers from Cockeyville.

An order should be passed in accordance with this opinion.

#### ORDER.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having on the date hereof filed an opinion containing its findings of fact and conclusions thereon, which said opinion is hereby referred to and made a part hereof:

It is, therefore, this seventh day of April, in the year nineteen hundred and thirteen, by the Public Service Commission of Maryland

*Ordered:* 1. That the Northern Central Railway Company start its train No. 100 from Parkton (instead of from Cockeysville as at present operated) at 5:30 a. m., stopping at stations between Parkton and Cockeysville, and running from Cockeysville to Baltimore on its present schedule, reaching Calvert Station at 6:45 A. M.

2. That said Northern Central Railway Company run its train No. 121 (which now ends its run at Cockeysville) to Parkton, leaving Baltimore at 10 p. m., and reaching Parkton at about 11:30 p. m., stopping at stations between Cockeysville and Parkton.

3. That the foregoing changes in the operation of train No. 100 and train No. 121 be put into effect at the time of the general spring change of schedule in the month of May, 1913.

4. That said Northern Central Railway Company be and it is hereby required to operate its train No. 200 from Parkton to Baltimore (said train leaving Parkton at 6:50 a. m., and scheduled to arrive in Baltimore at 8:20 a. m.) on its published schedule time, and said Company is further ordered to cease and desist from placing said train No. 200 on a side track or otherwise detaining it when running on its own schedule time, and from holding it back at point of origin in order to give the right of way to through or interstate trains which have been delayed at points beyond the run of train No. 200, and which, by reason of such delay, can only be run through to destination by displacing train No. 200 and depriving it of the time allotted to it by said published schedule.

5. That the rules for the operation of train No. 200, contained in paragraph 4 of this order, shall apply generally to local trains operated by said Company.

## NEW HAMPSHIRE.

### Public Service Commission.

#### PETITION OF BOSTON AND MAINE RAILROAD COMPANY FOR APPROVAL OF AN ISSUE OF BONDS.\*

Docket No. 100.

*Decided February 11, 1913.*

#### Authorization of Bonds—Purchase of New Equipment.

The Commission granted this application of the Boston and Maine Railroad for permission to issue bonds to the amount of \$7,500,000, especially approving the proposed expenditure of \$6,600,000 for new freight cars as being highly expedient and necessary for the purpose of wiping out the annual adverse balance for hire of equipment.†

#### APPEARANCES:

For the petitioner: *Edgar J. Rich, General Solicitor*, and *William J. Hobbs, Vice-President*.

#### REPORT.

The Boston & Maine Railroad Company, by this petition, asks leave to issue bonds of a par value of not exceeding \$7,500,000, bearing interest at four and one-half per cent., and payable twenty years from January 1, 1913.

A hearing was held at the office of the Commission in Concord, on December 9, 1912.

The issue is desired for the purpose of funding floating indebtedness incurred for equipment and for permanent addition to and improvements in the property of the company, for the purchase of further equipment and for payment of sums to be expended in completing said additions and improvements, and for refunding bonds of the Worcester,

\*A supplementary report in this case is printed at page 822.—Ed.

†Editor's headnote.

Nashua & Rochester Railroad Company, payment of which was assumed on the purchase of the property and franchises of that company. The amount required for these purposes, as shown by schedules filed with the petition, is \$9,698,444.22, which is diminished by the value of property sold or abandoned, amounting to \$2,360,612.61, leaving the sum of \$7,848,831.61 required for the purposes specified.

The purposes for which the expenditures have been made or are contemplated are all proper objects for an issue of bonds. So far as the expenditures purport to have been made, we find them to have been in fact made, and the sums estimated for the purposes of completing additions and improvements not yet completed are necessary for that purpose.

The principal item of proposed future expenditure is \$6,600,000, for 6,000 new freight cars. This expenditure we regard as not only lawful and reasonable, but in the highest degree expedient and necessary. In our Report on an Investigation of Railroad Rates, filed December 1, 1912, at page 208, in discussing "Further Possible Economies," we said:

"Inadequate freight equipment has been a source of expense, and a rapidly growing one, the adverse balance against the Boston & Maine company for the hire of equipment in 1912 having reached a figure exceeding \$1,000,000, a sum representing 5 per cent. interest on \$20,000,000 of capital—enough to nearly double the present freight car equipment of the system. That some increase is needed has now been recognized by the management, as evidenced by the recent authorization of an issue of over \$18,000,000 of new securities, a substantial part of which it is announced will be devoted to such purchases. Similar conditions existed on the New York, New Haven & Hartford but a few years back, and by the application of this same policy the adverse balance has been entirely wiped out and a credit substituted in its stead, the result of the rentals for its cars on other lines exceeding that of foreign cars used on the lines of the New York, New Haven & Hartford Railroad."

The adverse balance has shown a large increase in the first half of the present fiscal year, which will be still further enhanced by the advance in the *per diem* charge from thirty-five cents to forty-five cents, effective January 1, 1913. The net annual gain to the railroad from the purchase of these cars, making due allowance for interest, depreciation and repairs, will be in excess of \$200,000. These considerations may not be essential to our decision upon this petition, but we desire to record our conviction that the proposed investment is in the line of a wise economy, and that further expenditures of the same nature would not be justly subject to unfavorable criticism.

We find that the proposed issue of bonds is reasonably requisite for the purposes specified in the petition, and an order will issue accordingly.

Filed February 11, 1913.

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PETITION OF BOSTON AND MAINE RAILROAD COMPANY FOR APPROVAL OF AN ISSUE OF BONDS.

Docket No. 100.

*Decided March 20, 1913.*

**Bond Discount—Jurisdiction of Commission—Minimum Price of 90 per cent. Fixed.**

The original order in this case provided, in accordance with Chapter 22 of the Laws of 1903, that the bonds thereby authorized should be issued at not less than par. An act repealing this chapter having been passed on March 19, 1913, the Boston and Maine Railroad asked that the original order be amended by striking out the words "and to be issued at not less than par", so as to authorize the issue without limitation as to the selling price.

Holding that the repealing act had not removed all restrictions upon the selling price of bonds and that Section 2 thereof, providing that bonds shall be issued "in accordance with an order of the Public Service Commission authorizing the same", must have reference to the price, the Commission adopted a general rule that "no bond issue will be authorized at a lower rate than ninety per cent. of the par value, except for special cause shown. \* \* \* The minimum named will be merely the application

of the rule to the particular case and not at all an expression of this commission's judgment as to a fair price for the contemplated issue."\*

### SUPPLEMENTARY REPORT.†

The order previously issued on this petition provided that the bonds thereby authorized should be issued at not less than par. This limitation was imposed in compliance with the provisions of Chapter 22 of the Laws of 1903. On March 19, 1913, the legislature passed and the governor approved an act repealing that chapter.

The Boston & Maine Railroad now asks that the original order be amended by striking out the words "and to be issued at not less than par." Such an amendment would leave the issue without limitation as to price. In our report upon the Petition of the New England Telephone & Telegraph Company,‡ we expressed the opinion that the price at which the bonds were to be issued must be passed upon by us in determining the amount of bonds "reasonably requisite."

This opinion is strengthened by a consideration of the provisions of Section 2 of the act repealing the Statute of 1903, which is as follows:

"Sec. 2. No bond or note of any railroad corporation or public utility, issued in accordance with an order of the public service commission authorizing the same to be issued, shall be held to be invalid by reason of having been negotiated or sold by such railroad corporation or public utility at less than par."

By providing that bonds shall be issued "in accordance with an order of the public service commission authorizing the same," the legislature seems to have negated the inference that it intended to open the doors wide for the issuance of bonds without regard to the price at which they should be sold. There must not merely be an authorization of the issue, but the issue must be made "in accordance with" the order. What except price could be covered by the order in such manner that the issuance should be in accordance with it, is difficult to imagine.

\*Editor's headnote.

†The original report in this case is printed at page 819.—Ed.

‡Printed in Commission Leaflet No. 15, at page 283.—Ed.

There might, however, be great practical difficulties in always fixing the precise price at which bonds should be sold, in view of the frequent and often rapid fluctuations in the market; and the fixing of a minimum below the fair market rate might injuriously depress the selling price.

It has, therefore, seemed desirable to adopt a general rule that no bond issue will be authorized at a lower rate than ninety per cent. of the par value, except for special cause shown. The order in the present case will be based upon that general rule, and in this, as in other cases in the future, the minimum named will be merely the application of the rule to the particular case, and not at all an expression of this Commission's judgment as to a fair price for the contemplated issue. We understand that the price at which this issue is to be sold is considerably above the minimum named in the order, and there is no occasion for naming that minimum except that we do not desire, by our silence in the first case arising since the repeal of the Statute of 1903, to seem to assent to the proposition that that repeal has removed all restrictions upon the selling price of the bonds.

Filed March 20, 1913.

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PETITION OF BOSTON AND MAINE RAILROAD COMPANY FOR APPROVAL OF AN ISSUE OF STOCK.

Docket No. 101.

*Decided February 11, 1913.*

**Authorization of Stock—Acquisition of Stock of Leased Lines—  
Capitalization of Premium on Stock—Public Policy.**

Upon petition by the Boston and Maine Railroad for authority to issue 106,637 shares of common stock for the purpose of providing funds for the payment of money borrowed for the purchase of capital stock of other railroads, it appeared that if the petitioner were to capitalize the entire cost to it of the stock purchased, by the issue of its own stock at par, 109,691 shares would be required to pay for the 87,568 shares purchased, representing an increased capitalization of \$2,212,300.00 and that the 106,637 shares which it was desired to issue would represent an increased capitalization of \$1,906,900.00.



Adopting the reasoning of the Massachusetts Board of Railroad Commissioners in granting a petition for its approval of this proposed issue of stock, the Commission held that it is questionable whether it is consistent with sound public policy for the Boston and Maine Railroad to pursue a definite course of acquiring the ownership of its leased lines by issuing its own stock at par for the purpose of purchasing the stock of the leased lines at prices much above par, maintained at their high level, regardless of the actual earning capacity or physical value of the leased lines, by reason of the rentals assured the leased lines under the existing leases.

That the capitalization of the premium value of the capital stock of the leased roads would be clearly at variance with public policy and the fact that the increased capitalization was reached through the medium of Boston and Maine stock would not change the essential character of the transaction so far as the public is concerned since the burden of excessive rentals would thus be transferred from the stockholders of the Boston and Maine Railroad to the public;

That nevertheless, as the stock was doubtless purchased in the belief that its cost might be capitalized, it is consistent with the public interest to allow the capitalization in this instance;

That the elimination of the fixed charges due to rentals of leased lines, and a more equal distribution of dividends among all the stockholders of the Boston and Maine system, are for the public interest;

That the law providing that stock may be issued, with the approval of the Commission, for the purpose of purchasing stock in other roads, intended to place the purpose of the issue, as well as the determination of the amount expended, under the supervision of the Commission, and that in the future the approval of the Commission should be secured in advance, whenever it is proposed to purchase the stock of other railroads.

The Commission stated that its approval did not constitute a finding as to the value of the stock purchased or of the property represented thereby, and would not be considered in any future proceeding concerning the rates or value of the Boston and Maine Railroad or any of the properties involved.\*

#### APPEARANCES:

For the petitioner: *Edgar J. Rich, General Solicitor, and William J. Hobbs, Vice-President.*

#### REPORT.

This is a petition by the Boston & Maine Railroad asking for authority to issue 106,637 shares of its common stock for the purpose of providing funds for the payment of money borrowed for the purchase of capital stock of various other railroads.

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\*Editor's headnote.

A hearing was held at the office of the Commission in Concord, on December 9, 1912.

It appears that since January 1, 1910, the petitioner has purchased stock in other railroads as follows:

	SHARES	AVERAGE PRICE PER SHARE	TOTAL COST
Worcester, Nashua & Rochester Railroad Co., February, 1910, to June, 1912.....	30,984	\$153.95	\$4,770,098.95
Maine Central Railroad Co., October 1, 1911, to October 1, 1912.....	50,449	100.06	5,047,996.00
Boston & Lowell Railroad Corporation, August, 1911 .....	2,800	220.51	617,448.41
Concord & Montreal Railroad, April, 1912.	3,335	160.00	533,600.00

It will be noted that if the petitioner were to capitalize the entire cost to it of the purchase of the stock in question by an issue of its own stock at par, it would require an issue of 109,691 shares to pay for the 87,568 shares purchased. This would represent an increase in capitalization of \$2,-212,300. The number of shares desired to be now issued, 106,637, will represent an increase of \$1,906,900 above the amount of the par value of the stock purchased by the petitioner.

Upon a petition similar to this, asking the approval of the Board of Railroad Commissioners of Massachusetts to this proposed issue of stock, that Board, in the order\* approving the issue, commented upon this increase of capitalization as follows:

"It thus appears that the stock of all of the said corporations, with the exception of the Maine Central Railroad Company, was purchased at a price considerably above par. If the amount of this purchase price is to be provided by the issue of stock of the Boston and Maine Railroad at par, the result will be to increase largely the aggregate outstanding capitalization of the Boston and Maine Railroad system. If the various leased railroad companies attempted to capitalize the premium value of their own capital stock, it would be clearly at variance with the general policy of the commonwealth. The fact that the increased capitaliza-

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\*This order, dated February 7, 1913, will be printed in Commission Leaflet No. 18.—Ed.

tion is made through the medium of Boston and Maine stock does not change its essential character so far as the public is concerned.

"It is to be borne in mind also that this transaction goes farther than the capitalization of premiums on the stock based upon the earning capacity of these leased lines. Whatever amount of capital may have been put into these properties, and whatever their physical values may be at the present time, the market value of their stock does not reflect these values, or the present earning capacity of these lines, but is fixed almost solely on the basis of the rentals paid by the Boston and Maine Railroad. The higher these rentals are the higher will be the market value of the stock of the leased lines, no matter what may be the net financial result of their operations.

"As the market price of the shares of stock of these subsidiary lines is not determined by their earning capacity or intrinsic values, it has been exceedingly difficult for the Board to apply any satisfactory standard for determining the proper ratio of exchange between the stock of the Boston and Maine Railroad and that of the subsidiary lines. A careful physical valuation of the property of these lines, and an investigation of the aggregate amounts of capital contributed by their stockholders, would necessitate a long and unwarranted delay, and would not be conclusive in regard to the questions of policy involved.

"Attention should also be called to an important phase of this case. If an excessive rental is being paid by the Boston and Maine Railroad for any of its leased lines, the burden rests, as it should, upon the stockholders of the Boston and Maine Railroad; but if the artificial value thus given to the stock of any such leased line is to be capitalized, that burden is transferred to the public. The rentals heretofore paid to the Worcester, Nashua and Rochester Railroad Company, the Boston and Lowell Railroad Corporation and the Concord and Montreal Railroad are equivalent to about

three and three-quarters per cent. upon the purchase price paid for their stock. If this purchase price should be provided by the issue of stock of the Boston and Maine Railroad at par, the public, in any cases affecting the adjudication of rates, would be asked to pay sufficient rates to permit dividends of at least six per cent., instead of three and three-quarters per cent. as heretofore, upon this amount. \* \* \*

"On the other hand, the Board recognizes that the elimination of fixed charges due to rentals of leased lines, and a more equal distribution of dividends among all the stockholders of the Boston and Maine system is, within proper limitations, in the interest of the public. The Board has also in mind that any increase of capitalization for the purchases now under consideration would be more than offset by the decrease of capitalization due to purchases of the stock of other leased lines heretofore made at a price much below par. Moreover, while the approval heretofore given by the Board for the purchase of the stock of these leased lines does not imply that the entire amount of the expenditures for such purpose are properly subject to capitalization, the company, in the absence of any declared policy by the Board, might have been justified in assuming that the Board would authorize an issue of capital stock of the Boston and Maine Railroad sufficient to meet the expenditures so incurred with the approval of the Board.

"As the result of careful investigation and consideration of all the important questions of policy involved in the present case, the Board is prepared to approve the issue by the Boston and Maine Railroad of 106,637 shares of stock as prayed for in the petition. In so doing, however, the Board desires it to be distinctly understood that this action is not to be regarded as establishing a precedent in relation to similar purchases of stock hereafter made and that the Board reserves the right to take such action in relation thereto as may seem to the Board, in view of all the circumstances of each case, to be just and proper."

For the reasons so well stated by the Massachusetts commission, we deem it questionable whether it is consistent with a sound public policy that the Boston & Maine Railroad should enter upon a settled plan to acquire the ownership of its leased lines by issuing its own stock at par or thereabouts for the purpose of purchasing stock of the leased lines at prices much above par.

Paragraph (b) of Section 14 of Chapter 164 of the Laws of 1911, which is a substantial re-enactment of Section 1 of Chapter 19 of the Laws of 1897 and Section 1 of Chapter 60 of the Laws of 1909, provides that,

"A railroad corporation, for the purpose \* \* \* of purchasing the shares of the capital stock of any railroad corporation whose railroad property is leased to or operated by it, or of any other railroad corporation, a majority of the capital stock of which is owned by the purchasing road; \* \* \* may from time to time, with the authority of the Commission as herein provided, increase its capital stock or bonds beyond the amounts fixed and limited by its articles of association or its charter, or by any act of the general court, *provided* that such increase shall first be authorized by the vote of a majority of the stockholders present at any meeting of the corporation duly called for that purpose."

The Worcester, Nashua & Rochester Railroad, at the time of the purchase of its stock by the petitioner, was leased to the petitioner; so also were the Boston & Lowell and the Concord & Montreal, and the Maine Central was controlled through the ownership of a majority of its capital stock. The petitioner, therefore, relies upon this statute in asking for authority to make the proposed issue.

The purchase of the stock in question was made without the approval of the Commission except as to 1,067 shares of the Worcester, Nashua & Rochester Railroad which were acquired under a contract approved by this Commission on August 12, 1911, by an order reported in Public Service Commission Reports, Vol. 1, page 496. Prior to that date the petitioner had acquired 29,917 shares, and required the

approval of this Commission to a contract for the consolidation of the Worcester, Nashua & Rochester with the Boston & Maine, which contract included the purchase of the remaining shares.

In its report accompanying the order in that case, the Commission said:

"The matter comes before this Commission practically as a completed transaction so far as the principal expenditure by the Boston & Maine is concerned. Our refusal to approve the contract to purchase would compel the continued maintenance of the separate organization of the Worcester, Nashua & Rochester Railroad Company and might prevent the acquisition by the Boston & Maine Railroad of the few shares in that corporation still outstanding. \* \* \*

"No advantage to the public \* \* \* appears likely to result from continuing the separate corporate organization of the Worcester, Nashua & Rochester road. \* \* \*

"If the question of approving the purchase of the stock which the Boston & Maine Railroad now holds were before the Commission, instead of the question of approving the consolidation of the two corporations into one after that stock has been purchased, which, as we have shown, is in effect the question here, we should hesitate to give our approval without examination as to the value of the property by an expert or experts employed by this Commission. In this case, however, being satisfied that the Boston & Maine Railroad should be permitted to exercise its ownership in the most convenient way, we shall approve the contract before us, while making it clear that such action on our part does not constitute a finding as to the value of the property in question which can in any way affect the action of this Commission in any case concerning rates upon said road or in any other matter that may arise in the future wherein the value of said property may be material."

In this case there is no evidence before us which enables us to find that the value of the stock purchased by the petitioner is the amount which we find that it has expended for the same, or which would seem to justify us in appearing to approve a continuation of the course of purchasing stock of leased lines which is given a value in part artificial by reason of the dividends thereon which are assured by the existing leases. The purchases of stock here under consideration were doubtless made by the petitioner in the belief that they might be capitalized; and we believe it to be consistent with the public interest to allow such capitalization in this instance. We feel, however, that we should make it clear that it is our understanding of the law under which we are asked to act that the Commission should do something more than determine after a purchase is made how much money has been expended in making it. We think it more probable than otherwise that the legislature, in providing that stock might be issued for the purpose of purchasing stock in other roads, with the approval of the Commission, had in mind the entire transaction of the issuance of stock and the devotion of the proceeds of the same to the purchase of the securities desired to be secured. The purpose of the issue, as well as the issue itself, must have been intended to be placed under the supervision of the Commission, else the Commission in acting upon the application would become little more than a board of accountants exercising no real discretion.

There may be cases where it is consonant with public policy to allow a railroad corporation to issue its stock to purchase the stock of other roads and other cases where it is not. When any such corporation deems that facts exist which justify an issue of stock for such a purpose, such facts should be presented to this Commission and its approval secured in advance of the purchase proposed.

This statement of the attitude of the Commission we have deemed it proper to make so that it may be known in the future. The proposed issue of stock will be approved, but such approval will not constitute a finding as to the value

of the stock purchased by the petitioner or of the properties which they in part represent, and will not be considered in any future proceeding concerning rates upon any part of the Boston & Maine Railroad or in any other matter wherein the value of the Boston & Maine Railroad or of said properties may be material.

Filed February 11, 1913.



## NEW JERSEY.

### Board of Public Utility Commissioners.

#### RULES RELATING TO PETITIONS FILED BY MUNICIPALITIES, UNDER CHAPTER 57, P. L. 1913.

##### Elimination of Grade Crossings—Relocation of Telephonic and Telegraphic Construction. [Ed.]

Every petition filed with the Board of Public Utility Commissioners by a municipality, under chapter 57, Laws 1913,\* shall substantially comply with the following requirements:

(A) The petition shall, in separate paragraphs,

(1) Set forth the action of the board or body having charge of the finances of the municipality in pursuance of which the petition is filed.

(2) Locate the crossing or crossings with respect to which relief is sought by naming or otherwise designating the highway or highways affected.

(3) State generally that such crossing is dangerous to public safety, or that public travel on such highway is impeded thereby.

(4) State the form of protection, if any, afforded at such crossing at the time of the filing of the petition.

(5) Set forth the facts upon which relief under the statute is sought, by definite statements as to existing obstructions to a clear view of trains approaching such crossing, the volume and frequency of travel by pedestrians or vehicles over such crossing; the number and frequency of trains over such crossing; the speed of trains over and in approaching such crossing; the distance between such crossing and the nearest passenger station; the distance between such crossing and the nearest overhead or underground crossing, if any, within the limits of the petitioning municipality; the grade of the highway approaching such crossing; the

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\*Cf. Editor's Note on page 834.—Ed.

extent to which public travel is impeded; and other relevant conditions.

(6) State the name of the company or companies operating the railroad over such public highway.

(7) State whether or not any street railway uses such crossing, and if so, state the name of the company operating such street railway.

(8) State what, if any, property or construction of any telegraph, telephone, gas, electric, lighting, power, water, oil, pipe line or other public utility is located upon, over, across or under such crossing, and within the area that may possibly be affected by any order that may be made in granting the relief sought; and give the name of the company or corporation, co-partnership or individual owning such property or construction.\*

(9) State what, if any, municipal water or sewer pipes, or other municipal pipes, conduits or subways are located within the limits of such crossing and within the area that may possibly be affected by any order that may be made in granting the relief sought.

(B) The request for relief in the petition should be general in terms; should be framed to accord with section 1 of the statute, and should not limit the request of the municipality to any specified plan or method of altering the crossing to which the petition relates but may suggest such method.

(C) The petition shall have attached thereto a map, plan or drawing of the area that may possibly be affected by any order that may be made granting the relief sought, upon which shall be located the railroad; the crossing or crossings to which the petition relates, and also all other crossings within such area; the municipal water or sewer pipes, or other municipal pipes, conduits or subways, the street railways, and any property or construction of any telegraph, telephone, gas, electric, lighting, power, water, oil, pipe line, or other public utility located within the limits of such crossing and within such area.

(D) There shall be filed with the original petition as many copies thereof and of the maps, plans and drawings

\*Cf. Editor's Note on page 834.—Ed.

attached thereto, as there are parties in interest (other than the municipality) to the proceeding initiated by such petition.

#### NOTE.

Substantial compliance with these rules is important, since the petition of the municipality is the instrument upon which, under the statute, the jurisdiction of the Board is founded, where it does not act upon its own motion or upon the petition of a railroad company. Such compliance is further important as the work of the Board under the statute will thereby be facilitated and expedited.

**EDITOR'S NOTE.**—Section 4 of Chapter 57, N. J. P. L. 1913, approved March 12, 1913, provides:

"4. Where the order of said board shall require changes in, or the removal of the property or constructions of any telegraph, telephone, gas, electric, lighting, power, water, oil, pipe lines or other company or corporation, co-partnership or individual, they shall, at their own expense, move or change the grade or location of their property or constructions in conformity with the order of said board. They shall be deemed parties in interest and shall be given notice of hearing and an opportunity to be heard."

## NEW YORK.

### Public Service Commission—First District.

**IN THE MATTER OF THE COMPLAINT OF WILLIAM B. RAFFERTY  
AGAINST THE UNITED STATES EXPRESS COMPANY, *Defendant*.**

**IN THE MATTER OF THE HEARING UPON THE MOTION OF THE  
COMMISSION CONCERNING THE REGULATIONS, PRACTICES,  
SERVICE, RATES AND CHARGES OF THE UNITED STATES  
EXPRESS COMPANY WITH RESPECT TO THE HANDLING AND  
TRANSPORTATION OF BAGGAGE CHECKS WITHIN THE FIRST  
DISTRICT.**

Case No. 1589.

*Decided February 6, 1913.*

**Jurisdiction (Territorial) of Commissions—State vs. Interstate Jurisdiction—Traffic Between Points in New York State Over Waters of New York Bay—Consol. L., Ch. 59, §7, Construed.**—In a proceeding as to express rates and service between Staten Island and the Borough of Manhattan, each within the City and State of New York, it was contended by the defendant express company that the express business in question was conducted by means of the municipal ferry-boats, and that these boats, in passing through the waters of New York Bay, crossed the boundary line between the States of New York and New Jersey, and proceeded for a short distance on the New Jersey side of the line, after which they returned to the New York side of the line. The carrier contended that by reason of this slight "swing" of the boats through what were called New Jersey waters, any shipment between Staten Island and Manhattan was an interstate shipment, over which the New York Public Service Commission would have no jurisdiction. **HELD**,—that while the Commission is inclined to the opinion that, were the facts as contended by the defendant carrier, it nevertheless should properly be regarded that the boats touched New Jersey waters so incidentally that state regulation of such transportation would not be an interference with commerce between the states, this question need not be here decided, inasmuch as Consol. L., Ch. 59, §7, comprising an agreement entered into between the State of New York and the State of New Jersey in 1833, approved by Act of Congress in 1834, the State of New York was vested with "exclusive jurisdiction" over all the waters of New York Bay.

**Rates and Charges—Express Companies—Practice of Charging for "Transportation" of "Baggage Check" to Point from Which Baggage is to be Delivered Disapproved.**—The defendant carrier, when tendered a railroad baggage check at its local office in St. George, Staten Island, by the complainant, who desired that the carrier transport the trunk represented by the check from the Grand Central Terminal to the complainant's home on Staten Island, exacted a charge of twenty-five cents for the "carrying" of the check to Grand Central Terminal, in addition to the usual charge for carrying the trunk from Grand Central Terminal to Staten Island. HELD,—that it is clear that the carrying of the baggage check is not at all a separate and distinct transaction from the carrying of the baggage, but is simply incidental thereto, and the carrier will be required to cease and desist from exacting the charge complained of or any charge whatever for the carrying of baggage checks within the First District.\*

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IN THE MATTER OF THE APPLICATION OF THE INTERBOROUGH RAPID TRANSIT COMPANY FOR AUTHORITY TO EXECUTE ITS PROPOSED FIRST REFUNDING MORTGAGE, SECURING ITS GOLD BONDS, AND FOR THE CONSENT OF THE COMMISSION TO THE ISSUANCE OF CERTAIN BONDS THEREUNDER.

Case No. 1614.

IN THE MATTER OF THE APPLICATION OF THE NEW YORK MUNICIPAL RAILWAY CORPORATION TO EXECUTE ITS PROPOSED FIRST MORTGAGE AND DEED OF TRUST SECURING ITS FIRST MORTGAGE FIVE PER CENT. SINKING FUND GOLD BONDS, AND FOR THE CONSENT OF THE COMMISSION TO THE ISSUANCE OF BONDS THEREUNDER.

Case No. 1615.

*Decided March 20, 1913.*

**Issuance of Stocks and Bonds—First Refunding Mortgage to Secure Certain Bonds—Consent of the Commission to Execution and Issuance of Mortgage.**—Under all of the circumstances, the Commission should consent to the execution and issuance by the I. R. T. Co. of a first and refunding mortgage securing \$300,000,000, face value, of five per cent. gold bonds, upon the terms and conditions specified in the Order entered in Case No. 1614.

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\*Syllabus prepared by the Commission.—Ed.

**Issuance of Stocks and Bonds—First Mortgage and Deed of Trust to Secure Certain Bonds—Consent of Commission to Execution and Issuance of Mortgage.**—Under all of the circumstances, the Commission should consent to the execution and issuance by the N. Y. Mun. Ry. Corp. of a first mortgage and deed of trust to secure an issue of \$100,000,000, face value, of five per cent. bonds, upon the terms and conditions specified in the Order entered in Case No. 1615.

**Issuance of Stocks and Bonds—Amount of Securities Issuable—Approval of Issue—To Pay for New Subway Construction and Equipment of New Subway Lines.**—Under all of the circumstances, the Commission should authorize the I. R. T. Co. to issue \$160,957,000, face value, of bonds, dated January 1, 1913, maturing January 1, 1966, bearing interest at five per cent. per annum, to be sold so as to net not less than 93½ per cent. of their face value with accrued interest, redeemable on any interest day at 110 per cent. of the face value thereof with the accrued interest, and otherwise upon the terms and conditions, and for the purposes, specified in the Order entered in Case No. 1614.

**Issuance of Stocks and Bonds—Amount of Securities Issuable—Approval of Issue to Pay for New Subway Construction and Equipment of New Subway Lines.**—Under all the circumstances, the Commission should authorize the N. Y. Mun. Ry. Corp. to issue \$40,000,000, face value, of bonds, dated July 1, 1912, maturing January 1, 1966, bearing interest at five per cent. per annum, to be sold so as to net not less than 97 per cent. of their face value with accrued interest, redeemable on any interest day at 107½ per cent. of the face value thereof with accrued interest, and otherwise upon the terms and conditions, and for the purposes, specified in the Order entered in Case No. 1615.

Hearings closed March 19, 1913. Orders entered March 20, 1913.

As a consequence of the contractual arrangements entered into by the City of New York, acting by the Public Service Commission for the First District and the Board of Estimate and Apportionment, and the Interborough Rapid Transit Company and the New York Municipal Railway Corporation, respecting the construction, equipment, maintenance and operation of certain rapid transit railroads, the two corporations named made application to the Commission for consent to the issuance and execution of certain mortgages and the issuance thereunder of certain bonds.

The details of the respective applications are summarized in the Orders entered by the Commission, in Cases Nos. 1614 and 1615, respectively, granting the same, as hereinafter set out.

The contracts entered into by the City and the two corporations, as above referred to, were made in pursuance of the Rapid Transit Act (L. 1891, Ch. 4, as amended), and the

powers, duties and functions of the Commission in respect to such contracts were only those arising out of the provisions of the Rapid Transit Act (L. 1891, Ch. 4, as amended), the Commission being the successor of the former Board of Rapid Transit Railroad Commissioners.

The applications for the consent of the Commission to the execution and issuance of the corporate mortgages and the issuance thereunder of bonds were a part of the general contractual understanding entered into between the City and the two companies named, for the so-called "dual system" of rapid transit in the City of New York.

As stated in the "Editorial Note" to this Volume, reports or communications prepared by the Commission or members thereof upon matters arising by virtue of its functions under the Rapid Transit Act (L. 1891, Ch. 4, as amended) are not included in this series of Reports. Records in relation to the Commission's contractual and recommendatory powers under the Rapid Transit Act are published in the Annual Reports of the Commission and in the Minutes of its Proceedings. Information in relation to the rapid transit contracts in question will therefore be found in those publications, rather than in connection with the action taken in Cases Nos. 1614 and 1615. A summary of the provisions of the "operating contract" entered into with the Interborough Rapid Transit Company is, however, as follows:

"This contract puts into effect the Dual System agreement in so far as the subway lines to be operated by the Interborough Rapid Transit Company are concerned. It provides that the City shall construct the new lines allotted to the Interborough company, and that the company shall contribute not less than \$58,000,000 (or one-half the total) toward the cost of construction, and not less than \$22,000,000 toward the cost of equipment. The company is to get a lease of all lines for operation, including the present subway and the new lines, for a term of forty-nine years from January 1, 1917, the date set for the beginning of operation, and the lease is to expire at midnight on December 31, 1965. Provision is made for temporary operation of parts of the system as soon as completed. The City reserves the right to take over any or all of the lines at any time after ten years and terminate the contract. The company is to supply all the equipment, and, in the event of recapitalization, the City is to pay for the equipment.

"The lines which are to be built under this contract are described as the Seventh Avenue-Lexington Avenue line, the Eastern

Parkway line, the Steinway Tunnel line and the White Plains Road line. The Seventh Avenue-Lexington Avenue line consists of those parts of the subway extensions necessary to complete the "H" of the present subway with two Bronx extensions and the tunnel connection with Brooklyn; the Eastern Parkway line is the extension of the present subway in Brooklyn through Eastern Parkway and Livonia avenue; the Steinway Tunnel line is the existing Steinway Tunnel and its extension west under 42d street to Broadway and its extensions from the Queens end to the Queensboro Bridge plaza; the White Plains Road line is the extension of the existing subway from about 179th street to and through White Plains road to 241st street. The Lexington Avenue subway will be connected with the existing subway at a point in Park avenue just south of 42d street.

"The Public Service Commission is to prepare the construction contracts and specifications which will be generally similar to the Lexington avenue contracts. After the form of contract, specifications and contract drawings have been adopted, the Commission, before advertising for bids, 'shall transmit a copy of the same to the lessee and within ten days after such receipt, or such further time as the Commission may allow, the lessee shall return the same to the Commission with its criticisms or suggestions. The Commission shall thereupon consider any such criticisms and suggestions and its decision shall be final and binding upon the lessee. Proposals for making such contracts shall then be invited by the Commission in the form and manner required by Section 36 of the Rapid Transit Act.'

#### "How the Company's Money is to be Applied

"The Commission is to award the contracts, but is not to be limited to the selection of the lowest bidder, and it may reject all bids, and readvertise. After a contract is awarded, approved by the Board of Estimate and Apportionment and executed by the contractor, the Commission transmits it in triplicate to the company which becomes a party to the contract for the purpose of disbursing part of its contribution toward construction. The company has ten days in which to sign and return the contract to the Commission, which then executes it on behalf of the city. The Commission then undertakes the sole supervision and direction of the work. Periodically, but not oftener than once a month, the Chief Engineer shall estimate the value of the work done and the amount which shall be paid the contractor. The Commission will then prepare a voucher for the company's proportion of the amounts due the contractor, and send the same to the company for payment. Within thirty days thereafter the company shall pay this amount directly to the contractor.

"Of the total contribution by the company for construction, \$3,000,000 is to be allowed for the Steinway Tunnel, the title to which the company is to procure and transfer to the City of New York. Upon the vesting of title in the City, the company shall be



deemed to have contributed \$3,000,000. The amount of money already expended by the City in construction of the Lexington Avenue subway, estimated at about \$30,000,000, shall be deemed to be part of the City's contribution. The company is to pay all taxes due on the tunnel.

"As security the company must deposit with the Comptroller of the City \$1,000,000 in cash or in securities. When one-quarter of the \$58,000,000 to be contributed by the company has been expended, the Comptroller shall release to the company one-quarter of this deposit, and the other one-quarter as the company's contribution is applied. The company must also file a bond for contribution, equipment, maintenance and operation, in the sum of \$1,000,000 with two or more sureties, or, in lieu of such bond, cash or securities approved by the Commission. The company is to receive any interest or other income received by the City from the cash or securities deposited, or a sum equal to the interest on the deposit at the highest rate received by the City on its bank deposits.

"Arbitration is provided for in case difficulties arise between the City and the company. Each side is to name one arbitrator, and the third is to be named by the Chief Judge of the Court of Appeals, or, in his failure to act, by any of the Associate Judges of the Court of Appeals in order of seniority, or, in their failure to act, by the President of the Chamber of Commerce. It is provided that no claim shall be made by the company against any member or members of the Public Service Commission or the Board of Estimate and Apportionment personally by reason of the contract.

#### **"Complete City Control**

"Ample provisions are made for securing to the City the necessary control over expenditures by the company in the construction, equipment, maintenance and operation of the lines. This control is provided because 'the City's returns from its investment in the railroad and its exercise of its right to take over the railroad as provided in the lease will be affected by the amount of the lessee's expenditures.' Supervision by the Commission is agreed to, and the company is required to provide facilities for such inspections as the Commission may wish to make. It must keep proper accounts and permit their examination and submit to the Commission for approval any contract, agreement, mortgage or undertaking having to do with its contribution toward the cost of construction or equipment. Any contract, agreement or undertaking having to do with the maintenance and operation of the railroad, or of the existing railroads extending for more than one year or involving an expenditure of more than \$50,000 must be entered into subject to the approval of the Commission. No contract affecting maintenance or operation shall be for more than five years, except in the case of mortgages, assignments, leases, trackage agreements, power and advertising contracts, or modifications of original contracts. Systems of accounting and the method of keeping accounts may be prescribed by the Commission, as well as the form of vouchers and pay rolls to be used by the company. In expenditures made

in connection with maintenance and operation, the Commission may object to any item as improper or unreasonable, and the company shall hold the same in suspense account until it is adjudicated. If the Commission and the company fail to agree as to such items, a determination shall be obtained either by arbitration or by the court. 'The most thorough and minute inspection' by the Commission and its engineers is expressly provided for.

#### **"The Company to Pay for Equipment**

"As to equipment, the contract requires that the company shall provide it at its own expense, and, when accepted by the Commission, title to it shall vest in the City. The company is permitted to improve, reconstruct or change its power houses if necessary to provide adequate power for the operation of the road. All equipment must be of the best character 'known to the art of urban railway operation.' The Commission may order the company to begin providing equipment which shall be ready to put any portion of the road into immediate operation as soon as completed.

#### **"Terms of the Lease**

"The City leases the railroads and equipment to the company for operation in connection with the existing subway for a single fare. The lease under Contract No. 1 of the existing subway, which expires October 27, 1954, and the lease under Contract No. 2, which expires May 1, 1943, are modified and extended until midnight of December 31, 1965, so that all leases may expire together.

"The terms of the lease follow the lines laid down in the Joint Report of May 22, 1912. Receipts from all lines are to be pooled, and at the end of each quarter deductions therefrom shall be made as follows:

"1. To the City rentals now required to be paid under Contract No. 1 and Contract No. 2, such rentals to continue through the life of the new contract; also such rentals actually payable by the company for the use of other property in connection with the system, such as are not included in operating expenses.

"2. Taxes and governmental charges of every description against the company in connection with the system.

"3. All expenses, exclusive of maintenance, actually and necessarily incurred by the lessee in the operation of the system.

"4. Twelve per cent. of the quarter's revenue for maintenance, exclusive of depreciation. 'Maintenance' shall include repair and replacement of tracks, but not the replacement of any principal part of the structure and equipment. If the maintenance cost in any quarter year shall be less than 12 per cent. of the revenue, the unexpended balance shall go into the depreciation funds, and if any excess occurs it may be withdrawn from such funds.

"5. For the first year of operation an amount equal to five per cent. of the revenue for depreciation of such portions as are not repaired or replaced through expenditures for maintenance. Two depreciation funds are established—one for the existing subway, and one for the new lines; and they will be under the control of the Depreciation Fund Board.

"6. One-quarter of the sum of \$6,335,000 to be retained by the company, 'as representing the average annual income from the operation of the existing railroads.'

"7. One-quarter of an amount equal to 6 per cent. of the company's contribution toward the cost of construction and equipment for initial operation, such contribution not to exceed in total the sum of \$80,000,000. Out of this payment the company must set aside amounts sufficient, with interest and accretions, to amortize within the terms of the lease such contribution and cost.

"8. If additional equipment is provided, an amount to be retained by the company equal to one-quarter of the annual interest payable by it upon the cost of such additional equipment; together with a sum equal to  $\frac{1}{4}$  of 1 per cent. of the cost of such equipment to be paid into a separate sinking fund to be invested for the amortization of such cost.

"9. If the company shall share the cost of construction of additions to the Dual System, an amount equal to one-quarter of the annual interest payable by the company upon its share of such cost, together with  $\frac{1}{4}$  of 1 per cent. for amortization.

"10. An amount to be paid to the City equal to  $\frac{1}{4}$  of 8.76 per cent. of that portion of the cost of construction paid by the City.

"11. An amount to be paid to the City equal to one-quarter of the annual interest actually payable by it upon its share of the cost of construction of additional lines, together with  $\frac{1}{4}$  of 1 per cent. for amortization.

"12. One per cent. of the revenue to be paid into a separate fund under control of the Depreciation Fund Board to be invested and reinvested to provide a contingent reserve fund. When such fund equals 1 per cent. of the cost of construction and equipment, payments to it shall be suspended and interest on it shall be included in the revenue. If it falls below 1 per cent., payments shall be resumed until it again equals 1 per cent. This fund shall be used to meet deficits in operation, and for other purposes.

"13. The amount remaining after making the foregoing deductions shall be divided equally between the City and the company.

### **"When Operation Begins**

"When the Commission shall declare parts of the railroad ready, the company shall equip the same and operate it. Temporary operation to be on the same terms as are provided for the operation of extensions.

"The Depreciation Fund Board is to consist of three members—one to be chosen by the company, one by the Commission and the third by both jointly, or, in case of failure to agree, by the Chief Judge or an Associate Judge of the Court of Appeals, or by the President of the Chamber of Commerce.

"The company agrees to operate the road 'according to the highest standards of railway operation and with due regard to the safety of the passengers and employees thereof, and of all other persons.' Free transfers shall be given as required and approved by the Commission at common or connecting points. The company may carry freight, mail and express matter, provided that it shall not interfere with the passenger service. No part of the railroad or stations or other appurtenances thereof shall be used for advertising purposes, except that the company may post necessary bulletins. No trade or traffic, other than required for the operation of the road, shall be permitted, except such sale of newspapers and periodicals as may be permitted by the Commission. The company shall, under regulations prescribed by the Commission, advertise for proposals for the privilege of selling newspapers and periodicals at stations in such manner as to permit of separate contracts for each newsstand.

### **"Temporary Operation of Steinway Tunnel**

"Provision is made for the temporary equipment and operation of the Steinway Tunnel pending its reconstruction and completion, and for the giving of free transfers at 42d street and Park avenue between the Steinway Tunnel and the subway. Temporary equipment may be of single cars as approved by the Commission, and the cost is to be included as part of the cost of equipment under the contract.

### **"Operation of Extensions**

"The company agrees to equip, maintain and operate any extensions which the Commission shall determine should be operated as part of the Dual System. If the company accepts an extension it shall be operated as a component part of the system according to the foregoing terms. If the company shall not accept an extension, it shall operate it upon the following terms:

"From the gross receipts, which shall be the ticket sales at stations on the extensions, and the additional revenue from advertising on the extensions, and the proper proportion of general receipts, the following deductions each quarter year shall be made:

"1. All expenses of administration, maintenance and operation, including taxes.

"2. An amount to be retained by the company equal to one-quarter of the annual interest payable by it on the cost of additional equipment used on the extension, together with one-quarter of 1 per cent. for amortization.

"3. A similar amount to be paid to the City upon the cost of construction of the extension.

"4. A similar amount to be paid to the City upon the cost of construction of additions to the extensions with  $\frac{3}{4}$  of 1 per cent. for amortization.

"If the revenue from the extension shall be insufficient to pay these charges, the company may deduct such deficit from the revenue from the entire system prior to the payments to the City. If the revenue for the entire system is not sufficient to meet the deficit, and it is not made up from any other source, the lease of the extension may cease and determine, or the company may continue its operation, and the deficits shall be cumulative. In case the revenue of the extension meets all charges, it shall become a part of the original system, and be operated as such.

"There is a provision for the exchange of 'legs' of the present subway if the City should at any time desire to take over a complete east-side line or a complete west-side line without taking over the entire system."

**A summary of the provisions of the "operating contract" entered into with the New York Municipal Railway Corporation is as follows:**

"The operating contract with the Brooklyn Rapid Transit interests is made between the Public Service Commission, acting for the City, and the New York Municipal Railway Corporation, a company formed for the purpose of operating those parts of the Dual System allotted to the Brooklyn company, as well as the existing elevated lines of the B. R. T. It provides that the City shall construct the new lines of rapid transit railroad, and that the company shall contribute not less than \$13,500,000 toward the cost of construction, together with whatever sum is necessary to construct the physical connection at Canal Street between the Fourth Avenue subway and the proposed Broadway subway. The company also agrees to provide the money necessary for the reconstruction of its elevated lines and for all equipment.

"The elevated lines which are made a part of the system are: The Broadway line, the Fulton Street line, the Myrtle Avenue line, the Lexington Avenue line, the Fifth Avenue line, the Brighton Beach line, the Canarsie line and the Sea Beach line. The City leases the new lines to be constructed by it and those already constructed, together with the equipment, to the company for operation in connection with the existing railroads, for a term of forty-nine years, beginning January 1, 1917, and expiring at midnight on December 31, 1965. The City reserves the right to take over any line after ten years of operation.

"The new railroads are to be constructed according to contract drawings, plans and specifications prepared by the Commission and similar to those used on the Lexington Avenue subway. Stations are to be finished in a style similar to those on the Fourth Avenue subway in Brooklyn, and elevated stations similar to the stations on the Van Cortlandt Park extension of the present subway.

#### **"Trackage Rights in Queens**

"The City agrees to give to the company trackage rights over a part of the system to be constructed under the contract between the City and the Interborough Rapid Transit Company, namely, the Queens lines to Astoria and Corona. The terms and conditions for the use of these lines 'shall be reasonable, and may be agreed upon between the Commission, the lessee and the Interborough Rapid Transit Company.' Failure to agree upon reasonable terms may bring about arbitration or a settlement by the court. Such use of the tracks is limited to one-half the capacity of the lines.

#### **"How Company's Money is Applied**

"The disbursement of the company's contribution toward the cost of construction is provided for as follows:

"Forms of construction contracts, including specifications and contract drawings, generally similar to those prepared for the Lexington Avenue subway, shall be prepared by the Commission, and after adoption be transmitted to the company. Within ten days the company shall return them with its criticisms or suggestions. The Commission will consider such criticisms; but 'its decision thereon shall be final and binding upon the lessee.' The Commission will then advertise for bids for construction and award the contract, but shall not be limited to the selection of the lowest bidder. It may also reject all bids and readvertise for proposals. After the contract is awarded, approved by the Board of Estimate and executed by the contractor, the Commission shall transmit it in triplicate to the company. It is then to be signed by the company, which becomes a party to the contract 'for the purpose of disbursing part of its contribution to the construction of the railroad.' Within ten days the company shall return the signed contract and the Commission shall execute it on behalf of the City. The Commission then undertakes 'the sole supervision and direction of the work under such contract.' Monthly estimates are to be made by the Chief Engineer of the Commission of the amount due the contractor, and the Commission shall prepare and certify a voucher for the payment of the company's portion of the amount. The company within thirty days shall pay such amount to the construction contractor.

"As the company will bear the cost of constructing the connection at Canal Street between the Broadway and Fourth Avenue subways, and as the City has already contracted for that part of it at the intersection of Broadway and Canal Street, it is provided

that the remainder shall be constructed as extra work under the contracts already made by the City. The Commission's Chief Engineer shall determine the difference in cost between the Canal Street work without such physical connection and the work with such connection, together with any real estate or interest therein required by such connection, and the amount of such additional cost, together with such interest as may have been paid by the City shall forthwith be paid to the City by the company upon the demand of the Commission.

"It is provided in addition that the company shall so reconstruct its existing lines as to adapt them for operation in connection with the new subways. These adaptations include the elevation or depression, in whole or part, of the Sea Beach line so as to avoid grade crossings, and the construction of additional tracks where necessary; the construction of two additional tracks to the Brighton Beach line between Church Avenue and Malbone Street, and the elevation of existing tracks and the construction of two additional tracks between Neptune Avenue and the terminal at Coney Island; two-track elevated connection from Myrtle Avenue line near Wyckoff Avenue to a point about 1,000 feet east of Fresh Pond road; connection of Myrtle Avenue elevated tracks with Broadway elevated tracks; construction of adequate terminal facilities at Coney Island connecting the Brighton Beach line, as reconstructed west of 5th Street, with the Sea Beach line, as reconstructed near Surf Avenue and Stillwell Avenue; and the extension of platforms, increase of station facilities on existing lines, and the strengthening of those lines. Plans for the reconstruction of existing lines must be approved by the Commission.

"The City will acquire any real estate or rights therein necessary to the construction of the new lines.

#### **"Security Required of Company**

"The company must deposit with the Comptroller of the City \$1,000,000 in cash or securities as security for the faithful performance of the contract. One-quarter of this deposit will be released as soon as one-quarter of the company's total contribution toward the cost of construction has been expended, and the other quarters in the same manner as the work progresses. The company also must file with the City Comptroller a bond for \$1,000,000, signed by two or more sureties, or cash or securities in the same amount. This bond or deposit for contribution, equipment, maintenance and operation shall not be returned until the termination of the lease.

"Ample provisions are made for securing to the City the necessary control over expenditures by the company in the construction, equipment, maintenance and operation of the lines. This control is provided because 'the City's returns from its investment in the railroad and its exercise of its right to take over the railroad as provided in the lease will be affected by the amount of the lessee's expenditures.' Supervision by the Commission is agreed to, and the company is required to provide facilities for such inspections

as the Commission may wish to make. It must keep proper accounts and permit their examination, and submit to the Commission for approval any contract, agreement, mortgage or undertaking having to do with its contribution toward the cost of construction or equipment. Any contract having to do with the maintenance and operation of the railroad extending for more than one year or involving an expenditure of more than \$50,000 must be entered into subject to the approval of the Commission, and no such contract, except for mortgage, power, advertising, etc., shall be made for more than five years. Systems of account and the method of keeping accounts may be prescribed by the Commission. In expenditures made in connection with maintenance and operation, the Commission may object to any item as unreasonable or improper, and the company shall hold the same in a suspense account until its adjudication. If the Commission and the company fail to agree as to such items, a determination shall be obtained either by arbitration or by the court. 'The most thorough and minute inspection' by the Commission and its engineers is expressly provided for.

"The company is given the privilege for the first ten years of securing its electric motive power from outside sources pending the construction of the necessary power houses and sub-stations. The company must begin the providing of equipment for any portion of the new lines at such time as may be approved or ordered by the Commission. The equipment must be of the best character known to the art of urban railway operation. When the equipment is delivered on the railroad and accepted by the Commission the title to it shall vest in the City. Provisions for depreciation and amortization of equipment are made.

"Arbitration is provided for in case the Commission or the company desires to resort to it for the purpose of settling matters of difference arising under the contract. The Commission selects an arbitrator for the City, the company selects one for itself, and the two shall select the third. In case they fail to agree within thirty days, the third arbitrator shall be named by the Chief Judge of the Court of Appeals, or, if he fails to act within fifteen days, by any of the Associate Judges of that Court in the order of seniority.

#### **"Terms of the Lease**

"The terms of the lease as to rental, etc., follow the lines laid down in the agreement embodied in the Joint Report. Receipts from the existing lines and the new lines are to be pooled, and at the end of each quarter year deductions therefrom shall be made as follows:

"1. For such rentals actually and necessarily payable by the company for the use of the new system as are not included in operating expenses.

"2. All taxes and governmental charges against the company upon property or franchises used in the operation of new and old lines.

"3. All operating expenses exclusive of maintenance.



"4. An amount equal to 12 per cent. of the quarter's revenue for maintenance of road and equipment, exclusive of depreciation. Maintenance will include repair and replacement of tracks, etc., but not replacement of any of the principal parts of structure or equipment. If the maintenance charges in any quarter year are less than 12 per cent. of the revenues, the unexpended balance shall be transferred to the depreciation funds, and if more than 12 per cent. the excess may be withdrawn from such depreciation funds.

"5. For the first year of temporary operation an amount equal to 3 per cent. of the year's revenue for depreciation of such portion of roads and equipment as are not repaired or replaced through expenditures for maintenance as above provided. The Commission and the company are to agree upon the amount of depreciation to be allowed for future years. This amount for each year will be paid into three depreciation funds, the first to be known as 'Depreciation fund for the railroad and equipment'; the second as 'Depreciation fund for the plant and property of the extensions and additional tracks'; and the third as 'Depreciation fund for existing railroads.' Such funds shall be under the control of the Depreciation Fund Board. This board will consist of three members, one to be named by the City, one by the company and the third by agreement of the City and company, or, in case of their failure to agree within thirty days, by nomination by the Chief Judge of the Court of Appeals or any of the Associate Judges of said Court in the order of their seniority.

"6. One-quarter of the sum of \$3,500,000 to go to the company 'as representing the average annual income from the operation of the existing railroads during the two years prior to the beginning of initial operation, out of which the lessee shall pay interest charges on obligations representing the capital investment (preceding the date of this contract) on the existing railroads.'

"7. One-quarter of an amount equal to 6 per cent. of the company's contribution toward the cost of construction of the road, the cost of equipment for initial operation, the actual cost of plant and property, for extensions and additional tracks and the cost of reconstruction of the existing lines. Out of this the company shall set aside amounts sufficient, with interest and accretions, to amortize such contributions and such cost.

"8. If the company provides additional equipment beyond that needed for initial operation or additions to the existing railroads, it shall retain an amount equal to one-quarter of the annual interest payable by it upon the cost of each additional unit, together with  $\frac{1}{4}$  of 1 per cent. for amortization.

"9. To be paid to the City an amount equal to one-quarter of the annual interest payable by the City upon its share of the cost of construction and  $\frac{1}{4}$  of 1 per cent. of the City's share of such cost.

"10. To be paid to the City an amount equal to one-quarter of the annual interest payable by the City upon the cost of construction of each additional unit of additions to the railroad, together with  $\frac{1}{4}$  of 1 per cent. for amortization.

"11. One per cent. of the quarter's revenue to be paid into a separate fund, under control of the Depreciation Fund Board, to be invested and reinvested to provide a contingent reserve fund. When this fund reaches 1 per cent. of the cost of construction and equipment, payments to it shall be suspended, and interest thereon shall be paid into the revenue. Thereafter if it falls below 1 per cent., payments shall be resumed until it again equals 1 per cent. This fund shall be used to meet deficits in operation and the payment of various obligations approved by the Commission. Any balance remaining shall be paid into the revenue.

"12. The amount remaining after making all the above deductions shall be divided equally between the City and the company. Deficits are to be cumulative, and are to be paid out of later profits.

#### **"When Operation Begins**

"The company is to begin the operation of any part of the new system in connection with its existing lines whenever the Commission shall declare such part or parts ready.

"The company agrees to operate the railroad according to the highest standards 'and with due regard to the safety of the passengers and employees thereof and all other persons.' Free transfers shall be given as required by the Commission at common or connecting points so as to afford a continuous trip in the same general direction for a single fare. The company agrees to exchange transfers at 86th Street, Brooklyn, between the new system and the existing surface railroads now operating on Third Avenue and Fifth Avenue between 86th Street and Fort Hamilton. The company also will endeavor to secure authority for the extension of such surface railroads to a point near 86th Street and Fourth Avenue where a more convenient point of transfer can be installed. The company also agrees to undertake to make arrangements with the Hudson and Manhattan Railroad Company for free transfers at 34th Street, Manhattan, to and from the Grand Central station. Carriage of freight, mail and express matter is allowed if it shall not interfere with passenger traffic. The fare is limited to five cents, provided that the company may continue to charge ten cents for the fare to Coney Island and other points where such ten-cent fare is now allowed until the time when trains may be operated for continuous trips over wholly connected portions of the railroad (including both the Culver line and sub-division 8 of the Broadway-Fourth Avenue line) from the Municipal building, in the Borough of Manhattan, to the points at or near Coney Island, at which the construction of the railroad shall be suspended, as provided in Article VII.

"No part of the road or stations shall be used for advertising purposes, but the company may post information bulletins. No trade or traffic, other than required for the operation of the railroad, shall be permitted at stations, except such sale of newspapers and periodicals as may be permitted by the Commission. The company shall, under regulations, advertise for proposals for the privilege of selling newspapers and periodicals in such manner as to permit of separate contracts for all newsstands.

#### **"Operation of Extensions**

"The company agrees to equip and operate any extensions which the City may build. If such extensions are acceptable to the company, they shall become a part of the original system and be operated under the terms above described. If an extension is not acceptable to the company, it shall nevertheless equip and operate it, but upon the following terms:

"From the gross receipts, consisting of all ticket sales and other earnings at stations on the extension, and the additional advertising due to the operation of the extension, deductions each quarter year shall be made as follows:

"1. All expenses for operation, administration and maintenance, including damages for accidents and taxes upon such extensions and the extensions' proportion of other expenses in the ratio of ticket sales on the extension to ticket sales on the rest of the system.

"2. To the company, one-quarter of the annual interest payable by it upon the cost of additional equipment belonging to the extensions, together with  $\frac{1}{4}$  of 1 per cent. for amortization.

"3. To the City, one-quarter of the annual interest paid by it on the cost of construction of the extension, together with  $\frac{1}{4}$  of 1 per cent. for amortization.

"4. To the City, one-quarter of the annual interest paid by it upon the cost of construction of additions to the extensions, together with  $\frac{1}{4}$  of 1 per cent. for amortization.

"If in any quarter year the revenue from the extension is insufficient to pay operating expenses and interest on the equipment, the company may deduct the amount of such deficit from the revenue before the amounts payable to the City are paid. Such deductions are to be charged against the payments due the City under the lease of the original system; but such deficits shall not be cumulative. If there is a deficit after any one year in the amounts necessary to pay operating expenses and interest on cost of equipment; and if the remaining amount of payments due the City from the original system is insufficient to cover such deficit, and it is not made up from any other source, the lease of the extension shall cease, the company may withdraw from its operation, and the City shall take and pay for the additional equipment for such extension. If the revenue from the extension is sufficient

to meet the deductions named, such extension shall become part of the original system, and be operated as such.

"The question of interest upon \$40,000,000, borrowed by the Brooklyn Rapid Transit Company, and whether such interest from October 1, 1912, the date of the loan, should be included as part of the cost of construction, was settled by inserting in the contract provisions including such interest in the cost of construction, but providing that the excess of such interest over the amount properly chargeable shall be repaid into the revenue by the company from its 50 per cent. of the surplus profits. The effect of this is that interest on such excess will be paid to the company out of the earnings of the system until such time as the company begins to share equally with the City in surplus profits, out of which the company will repay it at the rate of one-fifteenth of its share each year."

The contracts between the City of New York and the Interborough Rapid Transit Company and the New York Municipal Railway Corporation, respectively, were executed by the parties thereto on March 19, 1913.

In addition to the two contracts above summarized, contracts were also entered into for the making of certain elevated railroad extensions embraced within the "dual plan." The contracts were with the New York Municipal Railway Corporation and the Manhattan Railway Company, respectively, and the Interborough Rapid Transit Company being the lessee and operator of the lines of the latter.

The Orders entered in Cases Nos. 1614 and 1615 were each approved by the affirmative vote of Chairman McCall and Commissioners Eustis, Cram and Williams. Commissioner Maltbie voted in opposition to each Order, on the ground that it was a part of the financial plan and arrangements to which he had fundamental objections. Commissioner Cram, who had voted against the "operating" contracts in question, did not vote against the Orders entered in Case No. 1614 and 1615, saying that, the contracts having been approved, he did not want, by any act, to delay the carrying out of them.

No Opinion was filed by any member of the Commission who voted for the entry of the Orders. Commissioner Maltbie filed an Opinion in dissent from the entry of both Orders.

The entry in the Minutes of the Commission for March

20, 1913, as to the action taken in Case No. 1614, was as follows:

**"Interborough Rapid Transit Company—Application for Approval of Execution of Mortgage and Issue of Bonds to Realize \$150,-797,500. Order Authorizing Issuance of Mortgage and of \$160,-957,000 Bonds.**

"It was moved and duly seconded that the following resolution be adopted:

"Resolved, that the Public Service Commission for the First District adopt an order in the form herewith presented consenting to the execution and issuance of a certain mortgage by Interborough Rapid Transit Company to Guaranty Trust Company of New York as Trustee, the said mortgage being in the form submitted by said Interborough Rapid Transit Company to the Commission and identified by being marked thereon as follows: "Exhibit 1, Resolution, March 20, 1913, Case No. 1614."

"It was further moved and duly seconded that an Order in Case No. 1614 be adopted consenting to the issuance by the Interborough Rapid Transit Company of a first and refunding mortgage to secure an issue of \$300,000,000 five per cent. bonds, and authorizing the issue by the company of \$160,957,000 of such bonds upon conditions as to the sale of the bonds so as to net not less than 93½ per cent. besides accrued interest, the application of the proceeds of \$34,540,800 of the bonds to the discharge or refunding of bonds issued under the company's mortgage dated November 1, 1907, of the proceeds of \$15,000,000 of the bonds to the discharge or refunding of renewal notes of the company dated January 29, 1913, of the proceeds of \$53,000,000 of the bonds to the discharge of its obligation to contribute toward the cost of construction of rapid transit railroads under the contract between the City of New York and the company dated March 19, 1913, of the proceeds of \$21,000,000 of the bonds to pay the cost of equipment of the said rapid transit railroad under said contract, of the proceeds of \$10,800,000 of the bonds to pay the cost of plant and structure and of equipment of additional tracks upon the elevated railroad of the Manhattan Railway Company under a certificate granted to the latter company dated March 19, 1913, of the proceeds of \$13,154,000 of the bonds to pay the cost of plant and structure and of equipment of extensions of lines of the elevated railroads of the Manhattan Railway Company under a certificate granted to the latter company dated March 19, 1913, of the proceeds of \$3,000,000 of the bonds to pay the cost of improvement, etc., to power house, sub-stations, transmission lines and electrical apparatus forming part of and supplying the lines of the Manhattan railroad in connection with the extensions and additional tracks under the certificate dated March 19, 1913, and of the proceeds of \$10,462,200 to the expenses of the sale of the bonds authorized and to make up the discount and deficiency of the amount realized

upon the sale; the amortization of all the bonds prior to their maturity; the keeping of accounts of the receipt and application of the proceeds of the bonds and making of reports thereof by the tenth day of each month, such accounts to be open to audit by the Commission; the return to the fund derived from the issue of bonds of certain expenditures not included in the cost of equipment under the contract of March 19, 1913, and in the cost of plant, structure, equipment and improvements under the two certificates dated March 19, 1913; the filing with the Commission of an estimate of proposed expenditures and plans showing the application thereof, at least ten days prior to the expenditure of proceeds of the bonds authorized for the purposes of improvements, etc., to power house, sub-stations, transmission lines and electrical apparatus forming part of and supplying the lines of the Manhattan railroad, and a limitation of the authority to bonds issued by June 30, 1917; and directed that a duplicate of the mortgage consented to should, upon execution thereof, be filed with the Commission; that the Commission consented to the mortgage of certain described contracts relating to the railroads operated or to be operated by the company; that the Order in Case No. 1392, adopted February 23, 1913, upon the application of the company be abrogated without prejudice to the issue made thereunder of \$3,407,000 bonds, and that the Order take effect immediately.

"Ayes: Commissioners McCall, Eustis, Cram and Williams.

"Nays: Commissioner Maltbie.

"Carried.

"Commissioner Maltbie, in voting, made the following remarks:

"I want it to appear that I vote against the mortgage because it is part of the financial arrangement which is a fundamental feature of the Interborough Rapid Transit Company's plan to which I have taken objection and which I consider improper."

"Commissioner Cram, in voting, made the following remarks:

"I vote for it because, the contracts having been adopted, I do not want by any act to delay the carrying out of the contracts. I do not approve of them, but I do not want to delay them now that they are executed."

The Order entered, in Case No. 1614, on March 20, 1913, granting the application of the Interborough Rapid Transit Company, was, in full, as follows:

"Section 1. Application having been made to the Public Service Commission for the First District by Interborough Rapid Transit Company by its petition dated and verified January 8, 1913, under the provisions of the Railroad Law for the consent of the Commission to the execution and issuance by said company of a mortgage to Guaranty Trust Company of New York as trustee, and a hearing having been duly held upon said application before the Commission, Honorable Milo R. Maltbie, John E. Eustis and George V. S. Williams, Commissioners, presiding; and it appearing

to the Commission that the owners of capital stock of said Interborough Rapid Transit Company to an amount equal to that required by the statute have consented to the issuance of said mortgage in the manner prescribed by law;

"Section 2. It is ordered that the Public Service Commission for the First District does hereby consent to the issuance and execution by said Interborough Rapid Transit Company of a certain mortgage described as follows:

"A first and refunding mortgage securing three hundred million dollars (\$300,000,000) face value of five per cent. gold bonds made and executed by the Interborough Rapid Transit Company to the Guaranty Trust Company of New York as trustee, the said bonds to be dated as of January 1, 1913, to be payable January 1, 1966, redeemable on any interest date at one hundred and ten per cent. (110%) of the face value thereof besides interest accrued thereon and said bonds to bear interest at the rate of five per cent. (5%) per annum payable semi-annually.

"The form of such mortgage submitted by said Interborough Rapid Transit Company to the Commission is hereby approved and ordered filed and properly identified by a reference thereon to the resolution under the authority of which this Order is issued. Said company, however, shall have no right or authority to issue any bonds pursuant to the terms of said mortgage, except as may be herein or hereafter authorized by the Commission.

"Section 3. Application having been also made to the Public Service Commission for the First District by Interborough Rapid Transit Company by its said petition under the provisions of the Public Service Commissions Law for the consent of the Commission to the issuance by said company of bonds thereunder to an amount face value which at the price of ninety-three and one-half per cent. (93½%) of the face value thereof will provide funds sufficient for the purposes in said application set forth, said bonds to be issued under the mortgage hereinbefore described; and a hearing having been duly had upon said application before the Commission, the Commissioners hereinbefore named presiding, and it being now the opinion of the Commission.

"(1) That the money to be procured by the issue of said bonds of the said Interborough Rapid Transit Company to the amount of one hundred and sixty million nine hundred and fifty-seven thousand dollars (\$160,957,000) payable at a period of more than twelve (12) months after the date thereof is necessary to and reasonably required by said company for the acquisition of property, or for the construction, completion, extension or improvement of its facilities, or for the discharge or refunding of its obligations, and particularly for the purposes which are hereinafter stated in this Order; and

"(2) That, except as to the following specified amounts of said bonds authorized to be issued hereunder to procure money to be applied for the purposes following, to wit:

"1. \$1,644,800 toward the discharge or refunding of the mortgage bonds of said company issued under its mortgage dated November 1, 1907, to the aggregate principal amount of \$32,896,000 at the redemption price of 105 per cent. of the face value thereof, for the premium of 5 per cent. upon the principal thereof;

"2. \$10,462,200, or so much thereof as may be necessary, to pay expenses of sale of the bonds hereby authorized and to make up discount;

said purposes are not in whole or in part reasonably chargeable to operating expenses or to income;

"Section 4. It is ordered that the Public Service Commission for the First District does hereby authorize the issue by the said Interborough Rapid Transit Company of one hundred and sixty million nine hundred and fifty-seven thousand dollars (\$160,957,000) face value of principal of bonds of said company dated as of January 1, 1913, maturing the 1st day of January, 1966, redeemable at one hundred and ten per cent. (110%) of the face value thereof besides accrued interest on any interest day and bearing interest at five per cent. (5%) per annum, payable semi-annually, under and in pursuance of the terms of the mortgage hereinbefore described, the issuance and execution of which is by this Order consented to by the Commission.

"Section 5. It is ordered that said issue of bonds is authorized upon the conditions following and not otherwise, to wit:

"First: That the said Interborough Rapid Transit Company shall sell the said bonds hereby authorized so as to net said company not less than ninety-three and one-half per cent. (93½%) of the face value of the principal thereof besides interest accrued thereon, and that the proceeds thereof shall be applied only to the following purposes, that is to say:

"1. Towards the discharge or refunding of the mortgage bonds of said company issued under its mortgage dated November 1, 1907, to the aggregate principal amount of \$32,896,000 at the redemption price of 105 per cent. of the face value thereof,  
for principal ..... \$32,896,000  
for premium of 5 per cent. thereon. 1,644,800    \$34,540,800

"2. To discharge or refund the renewal notes of the said company dated January 29, 1913, and due May 1, 1913, to the aggregate principal amount of \$15,000,000..... 15,000,000

"3. Toward the discharge of its immediate obligation to contribute toward the cost of construction of the rapid transit railroads for initial operation under the contract between the City of New York and the said Interborough Rapid Transit Company, dated March



19, 1913, for the construction, equipment and operation of additional rapid transit railroads. 53,000,000

"4. To pay the cost of equipment of the said rapid transit railroad for initial operation under and pursuant to said contract dated March 19, 1913, as such cost may be determined pursuant to said contract, including in such equipment any improvement, reconstruction, modification or change, authorized by the said contract dated March 19, 1913, and made pursuant thereto, of the power houses, sub-stations or other electrical equipment forming part of the existing equipment of rapid transit railroads now leased to and operated by it under contracts known and described as Contract No. 1 and Contract No. 2 ..... \$21,000,000

"5. To pay the actual cost of plant and structure and of equipment of third or additional tracks upon the lines of elevated railroad of the Manhattan Railway Company (leased to and operated by the company), under and pursuant to a certificate authorizing the construction, maintenance and operation of such third or additional tracks granted to said company dated March 19, 1913, as such actual cost may be determined pursuant to such certificate, including modifications, reconstructions, improvements or betterments of existing structures of the Manhattan Railway Company to facilitate construction or use of said plant and structure under such certificate, other than repairs, maintenance or replacements, but including replacements not due to wear and tear from operation and necessitated by the modification or reconstruction of existing structures of the Manhattan Railway Company to facilitate the construction or use of said plant and structure or of said equipment under such certificate..... 10,800,000

"6. To pay the actual cost of plant and structure and of equipment of the extensions of lines of elevated railroads of the Manhattan Railway Company (leased to and operated by the company) under and pursuant to a certificate granted to said company and dated March 19, 1913, authorizing the construction, maintenance and operation of such extensions in conjunction with the existing Manhattan rail-

road and, through trackage agreements, in conjunction with parts of the municipal railroads specified in said certificate, as such actual cost may be determined pursuant to such certificate, including replacements, substitutions, or renewals not due to wear and tear from operation and necessitated by the reconstruction of parts of the existing structures of the Manhattan Railway Company for the purpose of physically connecting the same with said extensions ..... 13,154,000

"7. To pay the cost of the improvements, reconstructions or changes to the power house, sub-stations, transmission lines and electrical apparatus required in connection therewith now forming part of and supplying the lines of the existing Manhattan railroad (other than repairs, maintenance or replacements), which shall be necessary to provide additional power for the operation of the extensions (including trackage rights) and the additional tracks authorized by said certificates, dated March 19, 1913, but including replacements not due to wear and tear from operation and necessitated by the modification or reconstruction of said existing power house, sub-stations, transmission lines or electrical apparatus to facilitate said purpose ..... \$3,000,000

"8. For the expenses of the sale of the bonds hereby authorized and to make up the discount or deficiency, if any, in the amount realized upon the sale to net not less than 93½ per centum of par of the bonds sold for the purposes specified in Subdivisions 1, 2, 3, 4, 5, 6 and 7 of this paragraph of this section, to be applied *pro rata* for the purposes therein stated, not exceeding the sum of..... 10,462,200

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\$160,957,000

"Second: That all of the bonds hereby authorized shall be amortized prior to the maturity of the said bonds out of the income of the company, provided, however, that the said amortization may be effected through the operation of the sinking fund provided for by the terms of the aforesaid first and refunding mortgage.

"Third: That the said company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale or disposal of the bonds hereby authorized to be issued; and on or before the tenth

day of each month, the company shall make verified reports to the Commission stating the sale or sales of said bonds during the previous month, the terms and conditions of sale, the moneys realized therefrom and the use and application of said moneys; and said accounts, vouchers and records shall be open to audit and may be audited from time to time by accountants and examiners designated for such purpose by the Commission.

"Fourth: In case any of the proceeds of the aforementioned bonds hereby authorized for the purposes specified in subdivisions 4, 5 or 6 of paragraph First of Section 5 of this Order shall be expended by the said company and the amount so expended or any portion thereof shall not be included in, or made a part of, the cost as finally determined pursuant to the contract referred to in subdivision 4, or the actual cost as finally determined pursuant to the certificate described in subdivision 5 or subdivision 6, the company shall forthwith, after such determination, return to the fund derived from the issue of bonds hereby authorized the amount not so included in any such determination. None of the proceeds of the aforementioned bonds authorized for purposes specified in subdivision 7 of paragraph First of Section 5 of this Order shall be expended by the said company for any of the purposes specified therein, unless the company shall at least ten days prior to such expenditure file with the Commission a statement showing the estimated amount of such proposed expenditure and the application thereof together with such plans or drawings as may be necessary to show the application and proposed use thereof. In case any of the proceeds of the aforementioned bonds hereby authorized for the purposes specified in subdivision 7 of paragraph First of Section 5 of this Order shall be expended by said company, and the Commission or the Court on review of an Order of the Commission shall determine that the amount so expended, or any portion thereof, has been expended for a purpose not specified in said subdivision 7, the company shall forthwith, after such determination, return to the fund derived from the issue of bonds hereby authorized the said amount so disallowed.

"Fifth: That the authority hereby given to issue such bonds shall apply only to bonds issued by the said company on or before the 30th day of June, 1917.

"Section 6. Ordered, that a duplicate original of the mortgage consented to and authorized as aforesaid upon execution thereof shall be filed by the petitioner with the Secretary of this Commission.

"Section 7. Ordered, that the Public Service Commission for the First District pursuant to the provisions of Section 54 of the Public Service Commissions Law and to the provisions contained in the contracts or certificates described as follows, namely:

"(a) A contract between the City of New York and John B. McDonald dated February 21, 1900, and agreements amendatory thereof and supplemental thereto;

"(b) A contract between the City of New York and Rapid Transit Subway Construction Company dated July 21, 1902, and agreements amendatory thereof and supplemental thereto;

"(c) A contract between the said City and Interborough Rapid Transit Company dated March 19, 1913;

"(d) A certificate granted by the Commission to the said Interborough Rapid Transit Company for extensions of elevated railroads bearing date March 19, 1913; and

"(e) A certificate granted by the Commission to Manhattan Railway Company providing for additional tracks bearing date March 19, 1913, does hereby consent to the mortgage of the lease parts of said contracts described in subdivision (a) and (b) above and of said contract described in subdivision (c) above and of the said certificates by including the same in the mortgage aforesaid, and that the said Commission does also consent to the assignment of the said certificate granted by the Commission to the Manhattan Railway Company providing for additional tracks bearing date March 19, 1913, by the said Manhattan Railway Company to the said Interborough Rapid Transit Company, and does also consent to the mortgage of that certain lease made and executed by the said Manhattan Railway Company to the Interborough Rapid Transit Company on or about January 1, 1903, and recorded in the register's office of the county of New York on April 1, 1903, in Liber 2, page 35, of General Conveyances by including the same in the mortgage aforesaid.

"Section 8. Ordered, that the Order of this Commission in Case No. 1392 upon application of said Interborough Rapid Transit Company, made and filed February 23, 1913, be, and the said Order hereby is, abrogated, without prejudice, however, to the issue made thereunder by said Interborough Rapid Transit Company of three million four hundred and seven thousand dollars (\$3,407,000) face value of bonds.

"Section 9. Ordered, that this Order take effect on the 20th day of March, 1913, and, except as provided in subdivision Fifth of Section 5 of this Order limiting the duration of the authority to issue such bonds herein granted, continue in force until otherwise ordered by the Commission; and that within ten days after service upon it of a copy of this Order said company notify the Commission whether the terms of this Order are accepted and will be obeyed."

The entry in the Minutes of the Commission for March 20, 1913, as to the action taken in Case No. 1615, was as follows:

"New York Municipal Railway Corporation—Application for Approval of Execution of Mortgage and Issue of \$65,000,000 Bonds—Order Authorizing Issuance of Mortgage and of \$40,000,000 Bonds.

"It was moved and duly seconded that the following resolution be adopted:

"Resolved, that the Public Service Commission for the First District adopt an order in the form herewith presented, consenting to the execution and issuance of a certain mortgage by New York Municipal Railway Corporation to Central Trust Company of New York, as Trustee, the said mortgage being in the form submitted by said New York Municipal Railway Corporation to the Commission and identified by being marked thereon as follows: "Exhibit 1, Resolution March 20, 1913, Case No. 1615."

"It was further moved and duly seconded that an Order in Case No. 1615 be adopted, consenting to the issuance by the New York Municipal Railway Corporation of a first mortgage to secure an issue of \$100,000,000 five per cent. bonds, and authorizing the issue by the company of \$40,000,000 of such bonds upon conditions as to the sale of the bonds so as to net not less than 97 per cent. besides accrued interest, the application of the proceeds of \$11,042,480 of the bonds to the discharge of its obligation to contribute toward the cost of construction of rapid transit railroads under the contract between the City of New York and the company dated March 19, 1913, of the proceeds of \$15,520,000 of the bonds to the cost of equipment of the said rapid transit railroads under said contract, of the proceeds of \$5,969,380, to the cost of reconstruction of existing railroads of the New York Consolidated Railroad Company under said contract dated March 19, 1913, of the proceeds of \$3,880,000 of the bonds to the cost of plant and structure, and of equipment of additional tracks upon the lines of elevated railroad of the New York Consolidated Railroad Company under a certificate granted to the New York Municipal Railway Corporation dated March 19, 1913, of the proceeds of \$2,388,140 of the bonds to pay the cost of plant and structure and of equipment and extensions of lines of elevated railroads of the New York Consolidated Railroad Company under a certificate granted to the New York Municipal Railway Corporation dated March 19, 1913, and of the proceeds of \$1,200,000 to the expenses of the sale of the bonds authorized and to make up the discount and deficiency of the amount realized upon the sale; the amortization of all the bonds prior to their maturity; the keeping of accounts of the receipt and application of the proceeds of the bonds and making of reports thereof by the tenth day of each month, such accounts to be open to audit by the Commission; the return to the fund derived from the issue of bonds of certain expenditures not included in the cost of equipment and reconstruction of railroads under the contract of March 19, 1913, and in the cost of plant, structure and equipment of additional tracks and extensions under the certificate dated March 19, 1913, and a limitation of the authority to bonds issued by June 30, 1917; and directed that a duplicate of the mortgage consented to should, upon execution thereof, be filed with the Commission, that the Commission consented to the mortgage of

certain described contracts relating to the railroads to be operated by the company, and that the Order take effect immediately.

"Ayes: Commissioners McCall, Eustis, Cram and Williams.

"Nays: Commissioner Maltbie.

"Carried.

"Commissioner Maltbie, in voting, stated that he voted against the motions for the same reasons as he stated in connection with motions in regard to the Resolution and Order in Case No. 1614, authorizing the issuance of a mortgage and bonds by the Interborough Rapid Transit Company."

**The Order entered, in Case No. 1615, on March 20, 1913, granting the application of the New York Municipal Railway Corporation, was, in full, as follows:**

"Section 1. Application having been made to the Public Service Commission for the First District by New York Municipal Railway Corporation by its petition dated and verified January 10, 1913, under the provisions of the Railroad Law, for the consent of the Commission to the execution and issuance by said company of a mortgage to Central Trust Company of New York as trustee; and a hearing having been duly held upon said application before the Commission, Honorable Milo R. Maltbie, John E. Eustis and George V. S. Williams, Commissioners, presiding; and it appearing to the Commission that the owners of capital stock of said New York Municipal Railway Corporation to an amount equal to that required by the statute have consented to the issuance of said mortgage.

"Section 2. It is ordered, that the Public Service Commission for the First District does hereby consent to the issuance and execution by said New York Municipal Railway Corporation of a certain mortgage described as follows:

"A first mortgage and deed of trust to Central Trust Company of New York as trustee to be dated as of July 1, 1912, to secure an issue of one hundred million dollars (\$100,000,000) face value of said bonds, the said bonds to be dated as of July 1, 1912, to be payable January 1, 1966, redeemable in whole or in part on any semi-annual interest date at one hundred and seven and one-half per cent. (107½%) of the face value thereof besides interest accrued thereon, and said bonds to bear interest at the rate of five per cent. (5%) per annum semi-annually.

"The form of such mortgage submitted by said New York Municipal Railway Corporation to the Commission is hereby approved and ordered filed and properly identified by a reference thereon to the resolution under the authority of which this Order is issued. Said company, however, shall have no right or authority to issue any bonds pursuant to the terms of said mortgage, except as may be herein or may be hereafter authorized by the Commission.

"Section 3. Application having been made to the Public Service Commission for the First District by New York Municipal Railway Corporation by its said petition under the provisions of the Public Service Commissions Law for the consent of the Commission to the issuance by said company under said mortgage of bonds to the amount of sixty-five million dollars (\$65,000,000) face value, said bonds to be dated as of the 1st day of July, 1912, to be payable on the first day of January, 1966, and to bear interest at five per cent. (5%) per annum payable semi-annually and secured by the mortgage hereinbefore in this Order described upon all the property of the company the issuance of which mortgage is by this Order consented to by the Commission; and, such hearing having been duly had upon said application before the Commission, the Commissioners hereinbefore named presiding, and it being now the opinion of the Commission,

"(1) That the money to be procured by the issue of said bonds of the said New York Municipal Railway Corporation to the amount of forty million dollars (\$40,000,000) face value payable at a period of more than twelve months after the date thereof is necessary to and reasonably required by said company for the acquisition of property, or for the construction, completion, extension or improvement of its facilities, or for the discharge of its obligations, and particularly for the purposes which are hereinafter stated in this Order; and

"(2) That, except as to the following specified amounts of said bonds authorized to be issued hereunder to procure money for the purposes following, to wit:

\$1,200,000, or so much thereof as may be necessary to pay expenses of sale and to make up discount,  
said purposes are not in whole or in part reasonably chargeable to operating expenses or to income.

"Section 4. Ordered, that the Public Service Commission for the First District does hereby authorize the issue by the said New York Municipal Railway Corporation of forty million dollars (\$40,000,000) face value of principal of bonds of said company dated July 1, 1912, maturing the first day of January, 1966, redeemable at one hundred and seven and one-half per cent. (107½%) of the par or face value thereof besides accrued interest on any semi-annual interest day and to bear interest at five per cent. (5%) per annum payable semi-annually under and in pursuance of the terms of the mortgage hereinbefore described and the making and execution of which is by this Order consented to by the Commission.

"Section 5. Ordered, that said issue of bonds is authorized upon the conditions following, and not otherwise (which conditions the company undertakes to perform as evidence by its acceptance of this Order, and which may be enforced against the said company by any appropriate legal proceedings) to wit:

"First: That the said New York Municipal Railway Corporation shall sell the said bonds hereby authorized so as to net the said company not less than ninety-seven per cent. (97%)

of the par value of the principal thereof besides interest accrued thereon, and that the proceeds thereof shall be applied only to the following purposes, that is to say:

"1. Toward the discharge of its immediate obligation to contribute toward the cost of construction of the rapid transit railroads for initial operation under the contract between the City of New York and the said New York Municipal Railway Corporation dated March 19, 1913, for the construction, equipment and operation of additional rapid transit railroads. \$11,042,480

"2. Toward the cost of equipment of the said rapid transit railroads for initial operation under and pursuant to said contract dated March 19, 1913, as such cost may be determined pursuant to said contract or to provide the cash deposit or deposit of securities required by said New York Municipal Railway Corporation under Article XVII of said contract ..... 15,520,000

"3. Toward the cost of reconstruction of the existing railroads of New York Consolidated Railroad Company (which the New York Municipal Railway Corporation has the right and is under obligation to operate) under and pursuant to said contract dated March 19, 1913, as such cost may be determined pursuant to said contract..... 5,969,380

"4. Toward the actual cost of plant and structure and of equipment of third or additional tracks upon the lines of elevated railroad of the New York Consolidated Railroad Company (which the New York Municipal Railway Corporation has the right and is under obligation to operate) under and pursuant to a certificate authorizing the construction, maintenance and operation of such third or additional tracks granted to said New York Municipal Railway Corporation dated March 19, 1913, as such actual cost may be determined pursuant to such certificate, including improvements or betterments of structures of existing railroads of the said New York Consolidated Railroad Company to facilitate construction or use of plant and structure under such certificate, other than for repairs, maintenance, replacements or substitutions, but including replacements, substitutions or renewals not due to wear and tear from opera-



tion and necessitated by the reconstruction of existing structures of the New York Consolidated Railroad Company to facilitate the construction or use of said plant and structure or of said equipment under such certificate..... \$3,880,000

"5. Toward the actual cost of plant and structure and of equipment of extensions of lines of elevated railroads of the New York Consolidated Railroad Company (which the New York Municipal Railway Corporation has the right and is under obligation to operate) under and pursuant to a certificate granted to said New York Municipal Railway Corporation dated March 19, 1913, authorizing the construction, maintenance and operation of such extensions in conjunction with the existing railroads of the New York Consolidated Railroad Company, as such actual cost may be determined pursuant to such certificate, including replacements, substitutions or renewals not due to wear and tear from operation and necessitated by the reconstruction of parts of the existing structures of the said New York Consolidated Railroad Company for the purpose of physically connecting the same with the said extensions..... 2,388,140

"6. For the expenses of the sale of the bonds hereby authorized and to make up the discount or deficiency, if any, in the amount realized upon the sale to net not less than ninety-seven per cent. (97%) of par on the bonds sold for the purposes specified in subdivisions 1, 2, 3, 4 and 5 of this paragraph of this section, to be applied *pro rata* for the purposes therein stated not exceeding the sum of ..... 1,200,000

"Second: That all of the bonds hereby authorized shall be amortized prior to the maturity of the said bonds through the operation of the sinking fund provided for by the terms of the aforesaid mortgage.

"Third: That the said company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale or disposal of the bonds hereby authorized to be issued; and on or before the tenth day of each month the company shall make verified reports to the Commission stating the sale or sales of said bonds during the previous month, the terms and conditions of sale, the moneys realized therefrom and the use and application of such moneys; and said accounts, vouchers and records shall

be open to audit and may be audited from time to time by accountants and examiners designated for such purpose by the Commission.

"Fourth: In case any of the proceeds of the aforementioned bonds hereby authorized for the purposes specified in subdivisions 2, 3, 4 or 5 of paragraph First of Section 5 of this Order (other than receipts on account of accrued interest) shall be expended by the said company, and the amount so expended or any portion thereof shall not be included in or made a part of, cost as determined pursuant to the contract referred to in said subdivisions 2 and 3 or of actual cost as determined pursuant to certificate described in said subdivision 4 or subdivision 5, respectively, the company shall forthwith repay to the fund described in the said mortgage securing said bonds as the 'cash proceeds,' the amount not so included in any such determination.

"Fifth: That the authority hereby given to issue such bonds shall apply only to bonds issued by the said company on or before the 30th day of June, 1913.

"Section 6. That a duplicate original of the mortgage consented to and authorized as aforesaid upon execution thereof shall be filed by the petitioner with the Secretary of this Commission.

"Section 7. Ordered, that the Commission, pursuant to the provisions of Section 54 of the Public Service Commissions Law, and to the provisions contained in the contracts or certificates described as follows, viz., (a) a contract between the said City and New York Municipal Railway Corporation dated March 19, 1913; (b) a certificate granted by the Commission to the said New York Municipal Railway Corporation providing for extensions of elevated railroads bearing date March 19, 1913, and (c) a certificate granted by the Commission to the New York Municipal Railway Corporation providing for additional tracks bearing date March 19, 1913, does hereby consent to the mortgage of said contract and certificates by including the same in the mortgage aforesaid, and that the said Commission does also consent to the mortgage of a certain contract (called the 'Operating Contract'), dated January 31, 1913, between the New York Consolidated Railroad Company and the New York Municipal Railway Corporation by including the same in the mortgage aforesaid.

"Section 8. Ordered, that this Order take effect on the 20th day of March, 1913, and, except as provided in the Subdivision Fifth of Section 5 limiting the duration of the authority to issue such bonds herein granted, continue in force until otherwise ordered by the Commission, and that, within ten days after service upon it of a copy of this Order, said company notify the Commission whether the terms of this Order are accepted and will be obeyed."

The Order entered by the Commission, in Case No. 1392, upon February 23, 1913, as to the issue of \$7,254,200 of bonds

by the Interborough Rapid Transit Company, but abrogated by the Order entered in Case No. 1614 on March 20, 1913, was as follows:

"An application by Interborough Rapid Transit Company to the Public Service Commission for the First District, dated February 8, 1912, having been received February 16, 1912, for a re-hearing herein, and for amendment to the Order made in this proceeding December 18, 1911, authorizing the issue of \$12,755,000 of bonds of said company and the Commission, after consideration of the facts set forth in said application, being of the opinion that said application should be granted, and that said original Order herein of December 18, 1911, should be changed as hereinafter set forth, it is

"Ordered by the Public Service Commission for the First District that the said original Order of December 18, 1911, made and filed in this proceeding as aforesaid, be and the same hereby is changed to read as follows:

"Section 1. Application having been made to the Public Service Commission for the First District by Interborough Rapid Transit Company, under provisions of the Public Service Commissions Law, for the consent of the Commission to the issuance by said company of bonds to the amount of \$17,123,611 face value, said bonds to be payable on the first day of November, 1952, and to bear interest at five (5) per cent., payable semi-annually and secured by a mortgage upon the property of the company; and a hearing having been duly held upon said application before the Commission, Honorable William R. Willcox presiding; and it appearing, among other things, upon said hearing, that under said mortgage there have been heretofore issued of said bonds \$30,000,000 pledged as collateral security for \$25,000,000 of six per cent., convertible gold notes of said company, dated May 1, 1908, maturing May 1, 1911, and \$10,000,000 to discharge or refund \$10,000,000 of five per cent. gold notes of said company dated March 1, 1907, maturing March 1, 1910, and that of said \$30,000,000 of bonds first mentioned by the refunding of said six per cent. convertible gold notes of said company \$3,947,200 face value have been cancelled, and through the deposit of money to pay off the balance of said notes on May 1, 1911, \$5,500,800 face value of bonds have been surrendered or released to the company, and that, pursuant to the said mortgage, an amount in face value equal to the face value of bonds so cancelled may be issued with the consent of the Commission, and that, after the cancellation of said \$3,947,200, there will be issued and outstanding under said mortgage as of the present date, exclusive of the said \$5,500,800 face value of said bonds so surrendered, only \$30,522,000 out of the \$55,000,000 of bonds authorized to be issued under and pursuant to said mortgage, and

"It being now the opinion of the Commission

"(1) That the money to be procured by the issue of bonds of the said Interborough Rapid Transit Company to the amount of \$7,254,200 face value, payable at a period of more than twelve months after the date thereof, is necessary to and reasonably required by said company, for acquisition of property, or for the construction, completion, extension or improvement of its facilities, or for the discharge or lawful refunding of its obligations, or for reimbursement of moneys actually expended from income, or from other moneys in the treasury of the corporation, not secured by or obtained from the issue of stocks, bonds, notes or other evidence of indebtedness of such corporation, for the acquisition of property or the construction, extension or improvement of its facilities, and particularly for the purposes which are hereinafter stated in this Order, and

"(2) That said purposes are not in whole or in part reasonably chargeable to operating expenses or to income:

"Section 2. It is ordered, that the Public Service Commission for the First District does hereby authorize the issue by the said Interborough Rapid Transit Company of seven million two hundred and fifty-four thousand two hundred dollars (\$7,254,200) face value of principal of bonds of said company, maturing November 1, 1952, redeemable in accordance with the terms of said mortgage at one hundred and five (105) per cent. of the par or face value thereof, besides accrued interest, and to bear interest at five (5) per cent. per annum, payable semi-annually, under and in pursuance of the terms of the mortgage heretofore and on the 1st day of November, 1907, made and executed by the said Interborough Rapid Transit Company to Morton Trust Company, as Trustee.

"Section 3. It is ordered, that said issue of bonds is authorized upon the conditions following and not otherwise, to wit:

"First: That said \$5,500,800 of bonds issued under and in pursuance of said mortgage and upon the deposit of cash to pay off the balance of said 6 per cent. convertible gold notes as aforesaid, due May 1, 1911, surrendered and released to the company as aforesaid, shall be sold at not less than par, with interest accrued thereon, and the proceeds thereof applied only, with the proceeds of the bonds hereby authorized, to the purposes hereinafter mentioned in this Order, making the amount of the said bonds so to be applied to said purposes the sum of \$12,755,000.

"Second: That none of the \$7,254,200 of bonds authorized hereunder shall be sold by the said Interborough Rapid Transit Company for less than par, with interest accrued thereon, and that the proceeds thereof shall be applied, with the proceeds of the said \$5,500,800 of bonds in the preceding paragraph mentioned, only to the following purposes, that is to say:

“(1) Toward discharging or refunding of \$10,000,000 of one year four and one-half per cent. notes of said company, dated April 29, 1911, incurred (a) to pay off \$4,-584,000 of the said six per cent. convertible gold notes, dated May 1, 1908.....	\$4,584,000
and (b) for construction, completion, extension or improvement of its facilities.....	3,000,000
	<hr/> \$7,584,000.00
“(2) To or toward discharge of indebtedness of Interborough Rapid Transit Company to the Rapid Transit Subway Construction Company for cost of construction of the Brooklyn-Manhattan Rapid Transit Railroad .....	3,500,000.00
“(3) For acquisition of property, and for the construction, completion, extension of the company's facilities during the year beginning July 1, 1911.....	996,332.85
“(4) Reserved in accordance with the provisions of the mortgage to pay or discharge mortgages upon real property acquired or paid for with moneys to be repaid out of proceeds of the issue hereby authorized, said mortgages being in amounts and upon property described as follows, namely: (1) property at two hundred and eighteenth street and Harlem River, \$500,000; (2) South Vernon park property, \$174,600.....	674,600.00
Total .....	<hr/> \$12,754,932.85

“Third. That said company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale or disposal of the bonds hereby authorized to be issued, and on or before the tenth day of each month the company shall make verified reports to the Commission, stating the sale or sales of said bonds during the previous month, the terms and conditions of sale, the moneys realized therefrom, and the use and application of such moneys; and said accounts, vouchers and records shall be open to audit, and may be audited from time to time by accountants and examiners designated for such purpose by the Commission.

“Fourth. That none of the proceeds of any of the aforementioned bonds shall be expended by the said com-

pany for purposes specified in subdivision 3 of paragraph Second of Section 3, other than the receipts on account of accrued interest, until a properly itemized bill for each proposed expenditure shall have been submitted to the Commission by the company, with the certificate of one of its officers that such expenditure represents a real increase in its fixed capital, as defined in the accounting rules of the Commission, and not a replacement of any part of such fixed capital, or a substitution for wasted capital, or other loss properly chargeable to income, and until such bills shall have been approved by the Commission.

"Fifth. That the authority hereby given to issue such bonds shall apply only to bonds issued by the said company on or before the first day of July, 1912.

"Sixth. That the Interborough Rapid Transit Company shall increase the annual sinking-fund payment provided for in Article XI of the said mortgage, and shall, as of the 1st day of November, 1911, and on the 1st day of November of each and every year thereafter, pay to the trustee as and for such sinking fund an amount equal to one per cent. of the total amount of the principal of bonds at the time of such payment outstanding secured by the said mortgage.

"Section 4. Further ordered, that the authority hereby given for the issuance by the Interborough Rapid Transit Company of the sum of \$7,254,200 face value of said bonds is without prejudice to any right of the said company to prosecute herein its application for authority to issue a further amount of said bonds, and is without prejudice to the right of the Commission to defer action and inquire further thereon, and upon the presentation of further proof to make its determination as to the same, and is likewise without prejudice to the right of the company to make further application to the Commission for authority to issue bonds to pay any debt to the Rapid Transit Subway Construction Company.

"Section 5. It is ordered, that this Order shall take effect on the 23d day of February, 1912, and, except as provided in the fifth subdivision of Section 3, limiting the duration of the authority to issue such bonds herein granted, continue in force until otherwise ordered by the Commission, and that, within ten (10) days after service upon it of a copy of this Order, said company notify the Commission whether the terms of this Order are accepted and will be obeyed."

The proceedings had and the Order entered, in Case No. 1392, on December 18, 1911, modified by the Order entered in Case No. 1392 on February 23, 1913, were summarized at 3 P. S. C. R. [1st Dist. N. Y.] —).

An application by the Continental Securities Company, as a minority stockholder of the Interborough Rapid Transit

Company, for an injunction restraining the voting, at a stockholders' meeting, of certain shares of the stock of the latter company held by a corporate trustee, in favor of the execution and issuance of the mortgage submitted to the Commission in Case No. 1614, was heard in the United States District Court for the Southern District of New York, by Mr. Justice Lacombe on February 24, 1913, and a decision handed down by him on February 27, 1913, denying the plaintiff's motion. (*New York Law Journal*, March 4, 1913.)

A temporary injunction restraining the execution and delivery of the proposed contracts with the Interborough Rapid Transit Company and the New York Municipal Railway Corporation, obtained in a suit instituted by Mr. John J. Hopper, was, on February 11, 1913, unanimously vacated and set aside by the Appellate Division of the Supreme Court for the First Department, in an Opinion handed down by that Court (*Hopper v. Wilcox et al.*, — App. Div. —). This Opinion discussed the validity of some of the financial arrangements involved in the contracts and mortgages for the carrying out of the so-called dual system of rapid transit. On February 28, 1913, the Appellate Division denied the application of the plaintiff for leave to appeal to the Court of Appeals. Presiding Justice Ingraham wrote for the majority, and with him concurred McLoughlin, Scott and Clarke, J. J. Mr. Justice Laughlin filed an Opinion in dissent.

Further facts as to the action taken in the matter appear in the Orders entered.

*Oliver C. Semple, Le Roy T. Harkness, and Arthur Du Bois*, for the Commission.

*Richard Reid Rogers, James L. Quackenbush, and Alfred E. Mudge*, for the Interborough Rapid Transit Company.

*George D. Yeomans, Arthur M. Williams, Charles L. Woody, and Joseph P. Cotton, Jr.*, for the New York Municipal Railway Corporation.

*Albert S. Bard*, for the Citizens' Union of the City of New York.

*J. Aspinwall Hodge and Alexander Holtzoff*, for the Continental Securities Company, a minority stockholder of the Interborough Rapid Transit Company.

**MALTBIE, Commissioner** (dissenting): These two applications for approval by the Commission under the Public Service Commissions Law of mortgages and bond issues thereunder are a result of the contracts recently entered into between the Commission, acting as a rapid transit commission for the City of New York, and the Interborough Rapid Transit Company and the New York Municipal Railway Corporation. But I shall discuss here only those phases of the financial plans which have been submitted for our approval as a regulatory body, and against which there are serious objections.

#### CAPITALIZATION OF REPLACEMENTS

A fundamental objection to both the Brooklyn Rapid Transit and the Interborough proposals is the contemplated capitalization of replacements. The New York Municipal Railway Corporation (Brooklyn Rapid Transit) purposes to issue 53½-year bonds to cover an expenditure of approximately \$6,000,000 on the reconstruction of existing railroads and \$3,880,000 on the third-tracking of existing elevated lines. A very considerable portion of the former sum will be spent on the mere replacement of existing property, leaving but a small part to cover actual additions to the property; and the same applies in a diminished degree to the second item. The cost of moving a track from one location to another, and installing new ties, rails, etc., is necessarily an element of operating expense, whether incurred in consequence of wear and tear, or of obsolescence and inadequacy. It is so treated in the accounting systems of this Commission and the Interstate Commerce Commission. Every well-managed corporation, before ascertaining profits and declaring dividends, sets aside some portion of its revenue to provide for extraordinary replacements that are not properly charged to the operating expenses of a single year.



The proposed plan of the Interborough company is even more objectionable, as that company proposes to take advantage of the situation to scrap a considerable amount of electrical apparatus in the Manhattan power house that has become out of date and uneconomical in operation. The machinery that will replace the discarded apparatus ought to be paid for (up to the cost of the latter) out of its depreciation fund, rather than the proceeds of 53-year bonds. The company is merely repeating the experience which brought the surface railways of Manhattan to financial difficulties. When money is borrowed to replace property originally acquired with borrowed funds, the necessary result is the existence of two debts or liens on a single property. The capitalization of replacements was strongly condemned in the Binghamton case by the Court of Appeals, which said (*People ex rel. Binghamton Light, Heat and Power Co. v. Stevens*, 203 N. Y. 21, 25) :

"It will not be denied that fuel and such other materials as are consumed from day to day and the labor incurred in daily maintenance should be paid for from the earnings of the corporation as a part of its running expenses prior to the payment of interest upon bonds or dividends upon capital stock. A reasonable consideration of the interests of a corporation and the ultimate good of its stock and bondholders, and a regard for the investing public and that fair dealing which should be observed in all business transactions, require that machines and tools paid for and charged to capital account, but which necessarily become obsolete or wholly worn out within a period of years after the same are purchased or installed, should be renewed or replaced by setting aside from time to time an adequate amount in the nature of a sinking fund or that by some other system of financing the corporation put upon the purchaser from the corporation the expense not alone of the daily maintenance of the plant but a just proportion of the expense of renewing and replacing that part of the plant which although not daily consumed must necessarily be practically consumed within a given time. If

that is not done and renewals and replacements are continually added to the capital account, the capital account must necessarily become more and more out of proportion to the real value of the property of the corporation."

#### REFUNDING EXISTING BONDS

The Interborough proposal to refund \$48,000,000 of outstanding bonds and notes invites severe criticism on the ground that a considerable part of those evidences of indebtedness was not issued for capital purposes. The book liability on bond account is \$39,460,000, but of this amount \$5,501,000 bonds have never been sold and \$1,603,000 have been reacquired for sinking-fund purposes, etc., so that the net amount outstanding is \$32,896,000. But most of these bonds were issued at a discount, so that the amount of cash realized and used for the acquisition of property was much less than \$32,896,000. A portion of the discount has been made up out of income, or by the sale of a few bonds at a premium, but the balance sheet of December 31, 1912, showed that there was still \$1,392,724 of debt discount and expense unamortized. Every principle of sound finance would require that bonds to this amount should be purchased and retired through the application of moneys in the company's treasury, rather than the moneys borrowed on a 53-year obligation. Moreover, the engineers of the Commission who examined the property acquired with the outstanding bonds found and testified under oath that certain of this property had been retired and was no longer in existence, while other expenditures on side-door experiments had been charged to capital account which should have been included in maintenance. The various items amounted in the aggregate to \$145,656, which sum should have been drawn from the depreciation fund and applied to the retirement of bonds. Altogether, more than \$1,500,000 of the outstanding bonds should have been redeemed out of current assets.

In order to redeem outstanding bonds, the company has to pay the bondholders a premium of 5 per cent., which amounts in the aggregate to \$1,644,800. This is another item

that a conservative plan of financing would require to be charged against surplus, and not against the new bond issue.

### CAPITALIZING LOSSES

Among the purposes to which the proceeds of \$15,000,000 of short-term notes were devoted was the purchase of real estate on investment account. Some \$1,118,000 was thus expended, in addition to which the company charged against the notes interest and taxes on the investment after the date of acquisition to the amount of nearly \$200,000. None of this real estate is used by the company or intended for immediate use. Some of it is rented, but the revenue derived therefrom amounted to only \$18,000 and the net loss to the company in the five years covered was \$176,416.56. On what principle a public service corporation can distribute among its stockholders the profits from some of its investments before deducting losses on other classes of investments is a question that deserves answer. This company's practice of charging interest and taxes on real estate to Investment Account, instead of Income Account, according to the testimony of the chief statistician of the Commission, contravenes the accounting rules prescribed by the Public Service Commission.

This item is, however, small in amount compared with the losses on the Steinway tunnel, which the company seeks to capitalize. Up to the beginning of 1908, the company had advanced to the New York & Long Island Railroad Company (the title of the company that built the Steinway tunnel) \$3,745,500, and to the trustees who took possession of the assets of the company when its corporate existence ceased \$3,332,401.16, in addition to the \$402,035 which it paid for the tunnel company's stock. As is very generally known, the expenditure is greatly in excess of the value of the tunnel, whether figured on the reasonable cost or the earning capacity. In its attempt to complete the tunnel before the expiration of its franchise, the tunnel company spent money so lavishly that large sums were wasted. The company has allowed the tunnel to lie idle ever since its completion, and practically the only work done on it for several years has

consisted of maintenance. Yet the company now asks the consent of the Commission to issue bonds to cover these direct expenditures of \$776,404.51 together with \$678,894 interest charges to June 30, 1909. At that time, realizing the futility of charging the tunnel company and crediting its own income account with interest on advances that could never be collected, the Interborough company ceased to pile up its nominal assets in this way. Nevertheless, it is now asking the Commission for authority to issue bonds to realize \$1,921,091.80, which it may add to its revenue or surplus and possibly distribute among its stockholders (a 5½ per cent. dividend) on the theory that such amount represents real income, whereas it is actually a book asset upon which the company cannot realize. And the books of the company will reveal a nominal asset of \$11,000,000 as compared with the \$3,000,000 at which the Steinway tunnel will stand in the Construction Account of the new subway lines. Such methods of manufacturing securities and creating fixed charges to burden future income ought to be condemned by this Commission, and not approved. Capitalization should not be based on assets. In the case of *People ex rel. New York Edison Co. v. Willcox* (207 N. Y. 86), the Court of Appeals (Judge Collin writing the Opinion) said:

"It [The Public Service Commissions Law] made the Commissions the guardians of the public by enabling them to prevent the issue of stocks and bonds for other than statutory purposes, or in appreciable and unfair excess of the value of the assets securing them."

At least \$6,000,000 of outstanding bonds and notes should have been paid off through the application of current assets which in considerable part really represent the proceeds of loans; and, if the precedents established by the Commission in previous cases were followed, the Order in this case would so provide. The excess of liquid assets over unfunded debt (other than the \$15,000,000 of notes) is \$9,200,000, which furnishes ample resources for such purpose. But it seems to be the notion that bonds may properly issue for losses and operating expenses as well as assets, so long as a sinking fund is provided for their ultimate retirement.

The Interborough mortgage provides that, if the bonds are redeemed or called in whole or in part before maturity, the holders thereof shall be entitled to receive 110 per cent. of their face value and accrued interest. When the present mortgage was authorized in 1908 the Commission refused to sanction a redemption price of 110, and required the company to reduce the figure to 105 (*Re Mortgage of Interborough Rapid Transit Co.*, 1 P. S. C. R. [1st Dist. N. Y.] 149). As the first issue of bonds was to net the company 95, it was considered that a 10-point difference between issue price and redemption price was ample. It is now proposed that the issue price shall be  $93\frac{1}{2}$  (net to the company) and that the redemption figure shall be 110, or a difference of  $16\frac{1}{2}$  points. It is suggested that this wide margin, is necessary to enable the bonds to be marketed at  $93\frac{1}{2}$ ; but if 10 points was sufficient in 1908 what has changed the situation to make  $16\frac{1}{2}$  points mandatory in 1913? Yet the interest on \$125,000,000 of these bonds is to be a preferred claim on earnings prior to interest on \$70,000,000 contributed by the City of New York. This is the first instance in the history of the Commission that a mortgage has been approved in which the redemption price of five-per-cent. bonds has been fixed at 110.

It is urged that the two cases before us are unusual, that the two proposals are part of the "subway settlement," and that these decisions cannot be considered precedents in future applications of a similar nature, if any are ever made. If such is the case, it should be clearly stated here, for the capitalization of replacements, unamortized discounts on refunded issues, expenditures properly chargeable to operation, losses on investments, unearned taxes and interest, etc., is certainly open to grave criticism and the idea ought not to be allowed to go out that this Commission believes such a financial policy is sound. In my opinion, there are no exigencies at present which justify an exception to the general rule even in these cases.

IN THE MATTER OF THE APPLICATION OF THE NEW YORK DOCK  
RAILWAY, UNDER SECTION 55 OF THE PUBLIC SERVICE  
COMMISSIONS LAW, FOR AN ORDER AUTHORIZING THE  
ISSUANCE OF CERTAIN SHARES OF ITS STOCK.

Case No. 1587.

*Decided March 28, 1913.*

**Issuance of Stock and Bonds—Purposes for Which Securities May Be Issued—Acquisition of Existing Property—Purchase of New Equipment—Cost of New Construction.**—The N. Y. D. Ry., a railroad corporation, asked authority to issue its stock for purposes as follows: \$334,250 for the acquisition of certain existing property to be taken over, \$48,850 for the acquisition of certain property described as railroad tracks, \$33,300 for the acquisition of certain new barges and lighters, and \$22,000 for the construction of new railroad tracks. HELD,—that the issuance of securities for these purposes should be authorized and approved.

**Issuance of Stock and Bonds—Purposes for Which Securities May Be Issued—Application of Proceeds—Payment for New York City Corporate Stock Required by Terms of Franchise.**—The N. Y. D. Ry. asked authority to apply proceeds of an issue of its capital stock to the discharge of obligations incurred by it in the sum of \$5,031.25 for the acquisition of \$5,000, par value, of the corporate stock of the City of New York, which the company was required, by the terms of its local franchise, to purchase and deposit with the City, the company meanwhile to receive the interest upon such corporate stock and the stock to be returned to it upon the expiration of its franchise. HELD,—that, under the circumstances, this is to be deemed a proper capital expenditure.

**Issuance of Stock and Bonds—Purposes for Which Securities May Be Issued—Application of Proceeds—Payment for Local Franchise—Amortization during Franchise Term.**—The N. Y. D. Ry. asked authority to apply proceeds of an issue of its stock to the discharge of obligations incurred by it, in the sum of \$5,000, for a cash payment to the City of New York for the local franchise under which the company will operate, exclusive of the annual payment of \$500 per annum under such franchise. The franchise also provided that, at the expiration of fifteen years from July 25, 1912, there should be a revaluation and a readjustment of the compensation to be paid the City thereafter. HELD,—that this sum is a legitimate charge under the Public Service Commissions Law and the application should be granted, on condition that the sum be amortized during the remainder of the initial period of the franchise term.

**Issuance of Stock and Bonds—Purposes for Which Securities May Be Issued—Payment for "Past Use and Occupation of the Streets" by Applicant's Parent Corporation.**—The N. Y. D. Ry., a subsidiary corporation of the N. Y. D. Co., asked authority to apply proceeds of an issue of its stock to the discharge of obligations incurred by it, in the sum of \$6,250, as payment "for the past use and operation of the streets by railroad tracks previously operated by the" N. Y. D. Co., the N. Y. D. Co. having no franchise for such use of the streets and the City having evi-

dently required the N. Y. D. Ry., before the City would give it a franchise, to compensate the City for illegal occupancy and operation by the parent corporation. HELD,—that the capitalization of this expenditure cannot be authorized, and the N. Y. D. Co. should reimburse the N. Y. D. Ry. for the amount thereof forthwith.

**Issuance of Stock and Bonds—Purposes for Which Securities May Be Issued—Organization Expenses—Legal Expenses—Amortization during the Remainder of the Franchise Period.**—The N. Y. D. Ry. asked authority to apply the proceeds of an issue of its stock to the discharge of obligations incurred by it, in the sum of \$3,917.54, for organization expenses, and \$26,904.82 for legal expenses. The applicant expressed willingness that all of these sums should be required to be amortized during the remaining period of the franchise grant. HELD,—that the application should be granted, on condition that all of the amounts be amortized as stipulated, even though a strict application of accounting principles would require only a portion to be amortized.

**Orders of the Commission—Issuance of Stock and Bonds—Terms upon which Authority Will Be Granted—Subsequent Submission of Lease.**—The N. Y. D. Ry. asked authority to issue its stock and bonds to acquire certain existing property and to make certain new construction. A considerable portion of the property, consisting of rails, ties, special work, etc., was to be located upon land and property and owned by the N. Y. D. Co. No contract or lease had yet been consummated between the two corporations. HELD,—that it would be improper to authorize stock for the construction of tracks on land in which the N. Y. D. Ry. has no interest, and the Order will therefore permit the issuance of the stock only when a lease or agreement has been submitted to and approved by the Commission, and then only upon such conditions as may be prescribed by the Commission in view of the terms of such lease or contract.

**Issuance of Stock and Bonds—Amount of Securities Issuable—Common and Preferred Capital Stock—Circumstances Held to Warrant Approval of Application.**—Under the circumstances stated in the Opinion, the N. Y. D. Co. should be authorized to issue \$50,000 of common stock and \$450,000 of its preferred stock, upon the terms and conditions, and for the purposes, specified in the Order entered.\*

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\*Syllabus prepared by the Commission.—Ed.

## **OKLAHOMA.**

### **Corporation Commission.**

**IN RE PROPOSED ORDER TO OKLAHOMA OPERATING COMPANY,  
A CORPORATION; KING'S LAUNDRY, A CO-PARTNERSHIP;  
WHITE SWAN LAUNDRY COMPANY, A CORPORATION; PAL-  
ACE LAUNDRY COMPANY, A CORPORATION; NEW STATE  
LAUNDRY COMPANY, A CORPORATION.**

**Cause No. 1633—Order No. 685.**

*Decided March 25, 1913.*

#### **Consolidation of Laundries.**

Upon complaint that many of the laundries of Oklahoma City had consolidated and increased prices, the Commission ordered an investigation. It appeared that eight laundries had been merged into a single company, known as the "Oklahoma Operating Company," for the purpose of curtailing operating expenses and maintaining a standard of prices, and that the new company controlled about 75 per cent. of the laundry business performed with collection and delivery service, in Oklahoma City. Four of the laundries taken over had been closed down after the consolidation was effected, and an attempt had been made to purchase the only remaining laundry of any considerable size. It further appeared that the prices charged by the Oklahoma Operating Company in Oklahoma City were in some instances higher and in others lower than the prices charged by the various laundries prior to the consolidation, and that the Oklahoma Operating Company had established an agency in the Town of Edmond and had charged substantially lower prices at this agency for the purpose of forcing the Edmond Steam Laundry to cease from soliciting business in Oklahoma City.

#### **Monopoly—Jurisdiction of Commission over Rates and Service.**

*Held:* That the laundry business, although it consists in the sale of services rather than commodities, is such a business as may be monopolized or combined in restraint of trade, and that the consolidation of the defendants into the Oklahoma Operating Company had created a virtual monopoly, making its business, prices and rates of public consequence and subject to the control of the Commission, under Section 8812 of Snyder's Compiled Laws of Oklahoma;

#### **Restraint of Trade.**

That the method employed in consolidating the eight laundries constituted a violation of the Statute, and that the establishment of an agency and the



cutting of rates in the Town of Edmond for the purpose of driving the Edmond Steam Laundry out of Oklahoma City, so that the defendant might control the business and prices in Oklahoma City, was illegal and reprehensible;

#### **Managers' Salaries.**

That although the salaries paid to the managing officials were higher than those usually paid for similar services, they might be justified by efficient management so long as reasonable rates were maintained and reasonable dividends paid to non-salaried stockholders;

#### **Restrictive Contracts with Drivers.**

That the restrictive provisions of the contract entered into with wagon drivers should be modified so that a driver leaving the company's service should not thereafter be prevented from entering into the laundry business in territory not covered by his route while employed by the company;

#### **Rates.**

That the prices charged by the Oklahoma Operating Company were approximately the standard prices for laundry service and therefore reasonable.

#### **Order.**

It was ordered that the Oklahoma Operating Company should not increase its prices for any class of service without first securing the approval of the Commission.\*

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**IN RE INFORMATION AGAINST THE TISHIMINGO ICE AND COLD STORAGE COMPANY, A PARTNERSHIP, COMPOSED OF P. T. FOLEY AND O. B. FOLEY, FOR VIOLATION OF ORDER NO. 504.**

**Cause No. 1408—Order No. 690.**

*Decided March 28, 1913.*

**Order Fixing Prices for Ice—Jurisdiction of Federal Court—  
Penalty for Violation—Refund of Overcharges.**

Upon complaint that the Tishimingo Ice and Cold Storage Company had violated the Commission's order No. 504, directing, among other things, that the defendant deliver ice in Tishimingo in lots of 100 pounds or less, at 60 cents per 100 pounds, and in lots of 600 pounds or more, at 40 cents per 100 pounds, it appeared that the previous order had been issued upon evidence that the defendant was practicing discrimination by selling ice in wagon-load lots or for the purpose of resale at 40 cents per 100 pounds and to customers living in the country at 50 cents per 100 pounds although the citizens of Tishimingo were charged 75 cents per 100 pounds.

The defendant had sought to enjoin the enforcement of this order but the United States District Court had held that the defendant had an adequate remedy in the state courts.

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\*Editor's syllabus.

*Held:* That, although the District Court could have enjoined the future enforcement of the order, it could not have ordered the abatement of the present action since the Commission's order is final and must be obeyed until an appeal is taken from the Commission;

That the defendant must either obey Order No. 504 or come before the Commission and show that the order is unreasonable;

That order No. 504 does not fix prices lower than those charged in other towns without an order of the Commission;

That, since the imposition of a heavy penalty, although just, would not inure to the benefit of the citizens of Tishimingo, only a nominal penalty will be imposed and the defendant will be required to make an accounting and refund all sums collected in excess of the prices prescribed in Order No. 504.

An order was entered accordingly.\*

#### **APPEARANCES:**

For the complainants: *Bingham & Garrett, Attys.*

#### **FINDINGS OF FACT, OPINION AND ORDER.**

##### *By the Commission:*

Information was filed with the Commission by J. W. Gilliam, *et al.*, of Tishimingo, alleging that the defendant, the Tishimingo Ice & Cold Storage Company, a partnership, composed of P. T. Foley and O. B. Foley, violated Order No. 504, wherein said order provides that the defendant shall deliver ice to parties within the corporate limits of Tishimingo in lots of 600 pounds or more at 40 cents per hundred pounds.

The case was heard at Tishimingo and no one appeared for the defendant, and the evidence showed that the defendant delivered ice in quantities of 600 pounds or more for 40 cents per hundred pounds for a short time after the order complained of was issued, but afterwards instructed the agents to charge 60 cents per hundred pounds in violation of the order.

The order violated reads as follows:

"Therefore, the Commission orders the Tishimingo Ice & Cold Storage Company, P. T. Foley and wife, and Alice H. Boone, and their successors, to sell ice to every one who wants to buy ice, at 50 cents per hundred pounds at their plant for one cake of 300 pounds or less, and 60 cents per hundred pounds from the wagons delivering to the citizens of Tishimingo for 100 pounds and less, and 40 cents per hundred

\*Editor's headnote.

pounds for two cakes. When sold at the plant, full weight shall be given; when sold from the wagons, 2½ per cent. shrinkage may be allowed," etc.

Prior to the making of the above order, the defendant had been selling ice at the plant in wagon loads, or to be resold, at 40 cents per hundred pounds, and delivering ice to the citizens of Tishimingo at 75 cents per hundred pounds. It refused to sell ice to any one living in Tishimingo at less than 75 cents per hundred pounds, although if the parties stated they lived in the country, it would sell ice in any quantity at the plant for 50 cents per hundred pounds, and the next customer, if he lived in Tishimingo and came to the plant for the ice, would be charged 75 cents, or the defendant would deliver the ice to the citizens of Tishimingo at 75 cents per hundred pounds.

At the time this information was filed in this case the party filing same had cold storage arrangements with the defendant by which he was paying \$25.00 per month. The party was not permitted to have cold storage after the expiration of the month in which the information in this case was filed. This to the Commission shows a degree of venom that doesn't usually go with a trained business man. Suit was filed in the United States District Court, seeking to enjoin the Commission from enforcing the order. When this suit was filed, the Commission took no further action in this case out of respect for the United States court, notwithstanding no order had come from that court requiring abatement of this action. In fact none could have come. The court could have enjoined the future enforcement of the order, but insofar as this case was concerned, it had passed beyond the reach of any court to stop the action of the Commission, except upon appeal from the Commission. The Federal Court held that the defendant had an adequate remedy in state courts to protect his rights.

At Ada, Oklahoma, the Commission issued an order more than two years ago fixing the price of ice in the business section of town at 40 cents per hundred pounds and in the residence section at 50 cents per hundred pounds. The order has been in effect with no complaint from the ice manu-

facturer. In many of the towns over the state ice is delivered cheaper than the order provides at Tishimingo. In Oklahoma City ice is delivered a distance of 3 miles for 35 cents per hundred pounds in 10 pound lots.

The defendant was selling ice at the ice plant at 50 cents per hundred pounds to country people. The order provides that it shall have 60 cents to deliver to the Tishimingo consumer. One ice wagon can deliver from three to five tons of ice per day. \$2.00 per ton is allowed by the order over the price the defendant was charging at the time. If three and one-half tons a day are delivered on an average by one wagon, this amounts to \$7.00 per day.

The circumstances in the former case are only mentioned herein to show that the order does not give to the people of Tishimingo ice for less than they are being served in other towns without an order of the Commission. The defendant had a perfect right to go into the Federal Courts or any other courts to determine any grievance he may have. He must now either come before this Commission and show that the Order No. 504 is unreasonable and unfair to him or he must obey it, and he must obey it to the letter. He can work with this Commission and help us to work out anything, or the Commission will work with him. We prefer that he pursue the former course.

The Commission could impose a fine of \$500.00 a day for the violation of this order but a penalty of that kind would not inure to the benefit of the citizens of Tishimingo even though in justice it should be done. The Commission will only impose a nominal penalty and will order the defendant to make an accounting and return all moneys collected from any one purchasing ice, in excess of the prices prescribed in Order No. 504.

*It is, therefore, ordered,* That the defendant, the Tishimingo Ice & Cold Storage Company, a partnership, composed of P. T. Foley and O. B. Foley, shall be fined the sum of Twenty-five Dollars (\$25.00), and the cost of this proceeding. For all of which let execution issue.

*It is further ordered,* That the defendant shall make an accounting to the Commission giving the names of all parties

to whom it sold ice in excess of the charges prescribed in Order No. 504, insofar as the records of the Company show, and shall deliver to the Commission the amount of such overcharges which shall be refunded by the Commission to the parties entitled thereto.

Oklahoma City, March 28, 1913.





American Telephone and Telegraph Company  
Bureau of Commission Research  
Legal Department  
15 Dey Street, New York City

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**COMMISSION LEAFLET No. 18**

June 1, 1913.

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**Recent Commission Orders, Rulings and Decisions  
from the following States:**

Arizona	New York
California	Oklahoma
Connecticut	South Dakota
Georgia	Vermont
Massachusetts	Wisconsin



Copyright, June, 1913,  
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## PART I.

### COMMISSION ORDERS, RULINGS AND DECISIONS DIRECTLY AFFECTING TELEPHONE AND TELE- GRAPH COMPANIES.

#### ARIZONA.

##### Corporation Commission.

*In re* CONTRACT OF SALE BY AND BETWEEN THE MOUNTAIN  
STATES TELEPHONE & TELEGRAPH COMPANY AND WM. B.  
WOODS, *et al.*

Docket No. 63.

*Decided February 13, 1913.*

##### Sale of Isolated Telephone Lines to Residents of Locality Served.

Upon application by The Mountain States Telephone & Telegraph Company for the Commission's approval of a contract for the sale of certain of its telephone lines to residents of the District covered by such lines, it appeared that the isolation of these lines from the Mountain States system by a gap of thirty-three miles, tended to increase operating expenses and consequently the rates charged.

The Commission held that the sale of the lines to residents of the locality served thereby would facilitate economical operation and conduce to reasonable rates, and therefore approved the contract.\*

##### APPEARANCES:

*Dean D. Clark* and *H. M. Fennemore*, representing The Mountain States Telephone & Telegraph Company.

*Fred W. Nelson*, representing Wm. B. Woods, *et al.*

##### OPINION AND ORDER.

*By the Commission:*

Pursuant to notice duly given this cause came on for hearing at the office of the Commission in Phoenix, Arizona,

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\*Editor's headnote.

the 26th day of January, 1913, at 10 o'clock, A. M., at which time and place the matters and things involved herein were submitted by the parties hereto, and full investigation made by the Commission.

The Mountain States Company is the owner of certain lines of telephone situated in Navajo and Apache Counties, connecting the Town of Holbrook and certain other towns southerly therefrom, said lines having been heretofore acquired by The Mountain States Company through purchase from The Overland Telephone & Telegraph Company.

A gap of approximately thirty-three miles exists between the Holbrook termini of the lines considered herein and the nearest adjacent termini of other lines owned and operated by The Mountain States Company, thus occasioning isolation from the Mountain States system, tending to greatly increase operating expenses and their necessary influence upon rates.

The petitioners, W. B. Woods, *et al.*, are residents of the District covered by said Holbrook lines, are thoroughly familiar with the construction and operation of the same, and we believe the approval of the sale prayed for herein will enable said lines to be more economically maintained, to be operated more consistently with reasonable rates for the consumers, and with greater business facility and advantage than now enjoyed by The Mountain States Company.

From the evidence and the whole thereof, it is the opinion of this Commission that the sale as prayed for herein should be granted.

*It is therefore ordered,* That The Mountain States Telephone and Telegraph Company be and the same is hereby authorized to sell, convey and transfer to W. B. Woods, Lloyd C. Henning and Fred W. Nelson all its right, title and interest in and to those certain telephone lines described in and according to the terms of the contract made and entered into by and between the parties hereto, said contract being hereby approved.

Dated at Phoenix, this 13th day of February, 1913.

IN THE MATTER OF THE APPLICATION OF THE ARIZONA & NEW MEXICO RAILWAY COMPANY TO PURCHASE, AND THE ARIZONA & NEW MEXICO TELEGRAPH & TELEPHONE COMPANY TO SELL THE PROPERTY OF THE LATTER COMPANY, AND OF THE SAID RAILWAY COMPANY TO LEASE THE SAID PROPERTY TO THE WESTERN UNION TELEGRAPH COMPANY.

Docket No. 66.

*Decided March 21, 1913.*

**Purchase and Lease of Telegraph Line by Railroad Company.**

The Commission authorized the Arizona & New Mexico Railway Company to purchase and operate the telegraph line owned by the Arizona & New Mexico Telegraph & Telephone Company situated along the former Company's right of way, and to lease this line thereafter to The Western Union Telegraph Company.\*

**APPEARANCE:**

*Hackins & Franklin*, representing the Arizona & New Mexico Railway Company.

**OPINION AND ORDER.**

*By the Commission:*

This cause coming on to be heard on the 15th day of February, 1913, upon the application of the Arizona & New Mexico Railway Company for authority to purchase and acquire the telegraph line belonging to the Arizona & New Mexico Telegraph & Telephone Company and situated along the right of way of said Railway Company, and thereafter to lease the property so purchased and acquired to The Western Union Telegraph Company; and upon the application of said Arizona & New Mexico Telegraph & Telephone Company to sell and convey said property to said Arizona & New Mexico Railway Company; and a hearing having been had on said application and the evidence in support thereof having been considered by the Commission, it is made to appear to the Commission that it is to the advantage of the public and of the petitioners making such application, to grant the same.

\*Editor's headnote.

*It is therefore ordered,* That the said Arizona & New Mexico Telegraph & Telephone Company is hereby granted authority to sell, assign, transfer and convey all of its property of every kind or character, including its telephone line and all wires, poles, conduits, instruments, buildings, structures, and appurtenances thereto belonging, or used in connection therewith, to the Arizona & New Mexico Railway Company for the sum of Seventeen Thousand Two Hundred and Eighty-one and 29/100 Dollars (\$17,281.29), such sum to be paid by crediting the said Arizona & New Mexico Telegraph & Telephone Company with that amount upon the indebtedness now due from said last named Company to said Arizona & New Mexico Railway Company, and said last named Company is hereby authorized to purchase and acquire all of said property and to hereafter operate the same under and in accordance with the powers contained in its articles of incorporation;

*It is further ordered,* That the said Arizona & New Mexico Railway Company after acquiring said property as above authorized, is hereby authorized to lease the same, or any part thereof, to the said The Western Union Telegraph Company by a lease in substantial conformity to the copy of the proposed lease filed with this Commission and the latter Company is hereby authorized to take said property by lease and operate it in accordance therewith and with the power it has under its articles of incorporation.

Dated at Phoenix, Arizona, this 21st day of March, 1913.

## CALIFORNIA.

### Railroad Commission.

#### *In re* CONNECTING AGREEMENT BETWEEN THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY AND LOUIS EVANS.

*Dated January 21, 1913.*

#### Connecting Agreement—Assignment of Limits to Connecting Company—Claim of Exclusive Right to Territory—Extension of Telephone Lines into Unserved Territory.

In disapproving the form of a proposed connecting agreement between The Pacific Telephone and Telegraph Company and Louis Evans, whose intention was to build rural telephone lines into territory not then served by The Pacific Telephone and Telegraph Company, the Commission held that no public utility has a legal right of ownership in any territory in the State of California, and that the contract in question and all similar contracts are void in so far as they (1) assert an exclusive claim to any territory; (2) assume the right to sub-license any territory; (3) purport to grant the privilege of extending telephone lines into territory not already served by The Pacific Telephone and Telegraph Company; or (4) require the consent of The Pacific Telephone and Telegraph Company to the construction of telephone lines by other parties.\*

The Commission's attention has been drawn to copy of proposed connecting agreement, your Form K-1003, dated Jan. 2, 1913, between your Company and Louis Evans, who intends to build rural telephone lines in Fresno County into territory which is not at present served by your Company. The Commission has given consideration to this form of agreement, and has authorized me to inform you that the Commission entirely disapproves of this form of contract for the following reasons, among others:

1. The contract states that the Sunset Telephone & Telegraph Company is a licensee of the American Telephone & Telegraph Company for territory including Fresno County, California, and that the Pacific Company is the lessee of the Sunset Telephone & Telegraph Company for this same

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\*Editor's headnote.

territory. This statement assumes that Fresno County, in so far as affects telephone business, belongs to these companies—an assumption which is not true. Neither of these companies have any rightful exclusive claim to any portion of the State of California, nor any right whatsoever other than the rights conferred by the statutes of this state and the orders of this Commission.

2. The contract states that the Pacific Company, in return for the consideration therein expressed, sub-licenses to Evans territory therein specified. As the Pacific Company has no right to this territory, it has no right to sub-license it to anyone or to ask that a person proposing to build a telephone exchange in this territory should first secure the permission of the Pacific Company.

3. In this contract the Pacific Company purports to grant to Evans the "privilege" of extending rural lines beyond certain radii to furnish service not already provided for. In other words, the contract assumes the necessity of securing the consent of the Pacific Company to build into territory which the Pacific Company itself is not even serving. It is not necessary to comment further on this point.

4. The contract further provides that no extension shall be made by Evans without first obtaining the written approval of the Pacific Company. The Pacific Company has no right to demand written or any approval for the construction by other parties of telephone lines in California. If any approval by any person is necessary it is the approval by this Commission in the cases specified in Section 50 of the Public Utilities Act.

I desire to say further that this Commission considers all similar contracts entered into as void in the respects hereinbefore indicated, and suggests that you modify your connecting agreements so as to be connecting agreements alone and not claims to own territory. As a matter of fact, no public utility has a legal right of ownership in any territory in the State of California.\*

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\*Informal ruling contained in a letter of the Commission, dated January 21, 1913, and issued over the signature of the Attorney of the Commission. [Ed.]

IN THE MATTER OF THE APPLICATION OF RAYMOND TELEPHONE COMPANY TO RAISE RATES AND TO MAKE CERTAIN ALTERATIONS IN THE PHYSICAL CONDITIONS UNDER WHICH SERVICE IS RENDERED.

Application No. 391—Decision No. 512.

*Decided March 20, 1913.*

Uniform Rates—Closing of Central Office—Concentration of Lines at One Office.

Upon application for permission to increase certain rates and reduce others so as to establish a uniform basis of rates for the applicant's telephone system and further for permission to close the applicant's central office at Coarse Gold and concentrate the lines involved at the central office at Raymond,

*Held:* That the proposed changes in rates will not result in exorbitant or unreasonable charges and that the service will be materially improved by the proposed alterations in the physical plant.

The application was accordingly granted.\*

APPEARANCE:

A. C. Shaw, for the Raymond Telephone Company.

REPORT.

GORDON, *Commissioner:*

This application is for permission to raise certain rates for telephone service in association with certain other rate changes which lower the charge for telephone service, the result being a uniform rate basis for the system of this company, these rate alterations to be accompanied by the closing of the central office at Coarse Gold and the bringing of all subscribers' lines into the central office at Raymond, Madera County, California.

The application was heard on February 21st at Raymond, and amounted to a rehearing of a similar former application by this company, being application No. 89, which was denied† because of lack of clarity in the information furnished and because of uncertainty on the part of the applicant as to

\*Editor's headnote.

†The decision upon Application No. 89 is printed in Commission Leaflet No. 15, at page 221.—Ed.



what he wished to do in the matter of the physical conditions under which he was rendering service.

The investigations in the former case justified certain raises in the rates involved, and on the occasion of this hearing no protest whatever was made to the general adjustment now prayed for. While certain rates will be raised by granting this application, others are lowered, and in no case does it appear that an exorbitant or unreasonable rate will result in view of the conditions under which this telephone service is being rendered; and the evidence indicates that the service will be materially improved by the closing of the Coarse Gold central office and the concentration of the lines on the board at Raymond.

It appearing from all the evidence that the rates petitioned for will be reasonable and that the improvement in service referred to will be effected, I recommend the following order:

#### ORDER.

Application having been made by the Raymond Telephone Company, of Raymond, Madera County, California, for an order of this Commission permitting applicant to increase certain telephone rates for the purpose of bringing the telephone system under a uniform rate schedule, and an order of this Commission permitting applicant to close its central office at Coarse Gold and to concentrate the lines involved on the central office board at Raymond, California, and a hearing having been held and it appearing that the rate alterations are fully justified and that the service will be improved by the proposed change of physical plant involved,

*It is hereby ordered,* That the Raymond Telephone Company be and the same is hereby permitted to put into effect on and after April 1, 1913, a monthly rental charge for service on the lines of said company between Raymond and The Pines via Fresno Flats and Coarse Gold, in Madera County, California, as follows: Residence telephones, \$1.50 per month; business telephones, \$2.00 per month; and that elsewhere on the telephone system of the petitioner the rates for these classes of service shall also be \$1.50 and \$2.00 per

month, respectively, thereby acquiring uniformity in rates over the entire system of the petitioner.

*And it is hereby further ordered*, That the Raymond Telephone Company be and the same hereby is permitted to close its central office at Coarse Gold and to concentrate the lines involved on its central office board at Raymond, Madera County, California.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 20th day of March, 1913.

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IN THE MATTER OF THE APPLICATION OF LOS GATOS TELEPHONE COMPANY FOR AUTHORITY TO ISSUE CAPITAL STOCK OF THE PAR VALUE OF FIFTEEN THOUSAND DOLLARS.

Application No. 423—Decision No. 520.

*Decided March 24, 1913.*

**Authorization of Stock Issue—Acquisition of Non-Revenue-Producing Property—Ability to Pay Dividends.**

Applicant proposes to expend \$12,000 in the purchase of a lot and the erection thereon of a building fully equipped for its purposes, its present equipment being housed in a rented building located at some distance from the logical wire center of the community. For this purpose, the company makes application for approval of the issue of \$15,000 capital stock to be sold at par, the balance of the proceeds, to wit: \$3,000, to be used for extensions and for the discharge of indebtedness. As the purposes for which applicant desires to expend the proceeds of said issue are proper corporate purposes and fall within the classes of expenditures authorized by the Public Utilities Act, application granted, the Commission pointing out material considerations which applicant should bear in mind in connection with the expenditure of moneys for non-revenue-producing properties.

## APPEARANCE:

*Rufus H. Kimball*, for applicant.

## REPORT.

THELEN, *Commissioner*:

This is an application for an order of this Commission authorizing the issue of capital stock of the par value of \$15,000 for the purposes hereinafter specified.

Los Gatos Telephone Company is one of the so-called independent telephone companies and serves the city of Los Gatos and territory adjacent thereto. The company has an arrangement with The Pacific Telephone and Telegraph Company providing for toll service.

Applicant was incorporated in November, 1910, with an authorized capital stock of \$25,000, divided into 2,500 shares of the par value of \$10 each. Of the stock so authorized, 1,955 shares have been issued. Of the shares so issued, 1,705 were sold for cash at par and 250 were issued as commission in connection with the purchase by applicant of its plant, formerly owned by Pacific States Telephone and Telegraph Company. Applicant alleges that the cost of its plant with extensions thereto has been \$22,372.15. In making this computation, no allowance has been made for depreciation except in so far as included in expenditures for repairs and extensions.

On the day of this hearing, March 19, 1913, applicant claimed to have 460 subscribers. During the period from December 1, 1911, to December 1, 1912, the number of applicant's subscribers increased by 79.

Applicant now applies for authority to issue 1,500 shares of its capital stock at not less than par and to apply the same to the following purposes:

For the purchase of lot for new building, not to exceed.....	\$4,000 00
For the erection of telephone building thereon, not to exceed	8,000 00
For refunding of promissory note for \$1,000, held by Bank	
of Los Gatos .....	1,000 00

For new construction as follows:

Additions to switchboard and protective equipment.	\$650 00
2,000 feet of 100 pair aerial cable.....	832 50
225 feet of 25 pair aerial cable.....	254 70
750 feet of 50 pair aerial cable.....	499 52

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\$2,236 72

Applicant's present equipment is housed in a rented building located at some distance from the logical wire center of Los Gatos. Applicant desires to purchase a lot more advantageously located with reference to a wire center and to erect thereon a fully equipped building to be devoted solely to its own purposes. It is clear that it would be advantageous for applicant to have its equipment located nearer the wire center, but it is not equally clear that it is necessary for this purpose to purchase a lot and erect thereon an \$8,000 building. Applicant desires also to refund a promissory note for \$1,000, now held by the Bank of Los Gatos, and to expend the sum of approximately \$2,236.72 for aerial cable extensions and switchboard equipment as hereinbefore indicated, for the purpose of providing in part for its growing business.

It will be noted that of the moneys thus to be expended, the sum of \$12,000 is to be spent for non-revenue-producing property. This fact necessitates an inquiry into applicant's financial condition for the purpose of ascertaining whether applicant will be able to pay dividends on the additional capital stock proposed to be issued and also to finance the necessary extensions.

A summary of applicant's finances for the year ending November 30, 1912, is as follows:

Total operating revenue .....	\$9,728 55
Plant addition .....	1,468 46
<b>Net operating revenue</b> .....	<b>\$8,260 09</b>
Operating expenses .....	6,061 48
<b>Net income</b> .....	<b>\$2,198 61</b>
Dividends, 8 per cent. on \$19,550 of stock.....	1,564 00
<b>Surplus</b> .....	<b>\$634 61</b>

If the applicant now issues additional capital stock of the par value of \$15,000 and pays 8 per cent. dividends thereon, it will expend annually an additional sum of \$1,200 for dividends. It is obvious that such payment can not be made out of a surplus of only \$634.61. Applicant, however, draws attention to the fact that the erection of the new building would save the item of \$540 for rent each year, \$25 to \$30 per season for heating, and the interest on a saving of some \$800 in the matter of aerial cable extensions. Applicant also urges that when these improvements have been made, it will be able to take care of new business, both waiting and prospective. In this connection applicant claims that it will be able to secure 150 additional customers within the city limits alone when it has installed the necessary additional cables.

Thus far applicant has not taken depreciation into consideration further than as indefinitely included in repairs and extensions.

It is evident that if applicant is to pay its usual dividends both on the present outstanding and on the additional capital stock, it will have to look to new business. It is equally apparent that no provision has been made for financing the necessary extensions. It is well known that in growing communities such as Los Gatos and vicinity the financing of new telephone extensions presents serious and unending difficulties.

It should be borne in mind that a utility's first duty is to render efficient and sufficient service for both its present and its prospective consumers.

I am not disposed to say to applicant that it shall not expend the sum of \$12,000 for a lot and a new building thereon, but I desire earnestly to draw applicant's attention to the necessity of conserving its resources to take care of the growing demands of the territory which it holds itself out as serving. Applicant should understand that this Commission will expect it to furnish adequate service on reasonable demand entirely irrespective of whether applicant purchases the new lot and erects the proposed building thereon.

As the purposes for which applicant desires to expend the

proceeds of the additional capital stock are proper corporate purposes and fall within the classes of expenditures authorized by the Public Utilities Act, and as I do not desire to hamper applicant in its plans but have pointed out very material considerations which applicant should bear in mind in connection with this matter, I submit herewith the following form of order:

### ORDER.

Los Gatos Telephone Company having applied to the Railroad Commission for authority to issue capital stock of the par value of fifteen thousand (\$15,000) dollars for the purposes hereinafter specified, and a public hearing having been held upon said application, and the Commission finding that the purposes for which the issue is hereby authorized are not in whole or in part reasonably chargeable to operating expenses or to income,

*It is hereby ordered*, That Los Gatos Telephone Company be and it is hereby authorized to issue its capital stock to the amount of fifteen thousand (\$15,000) dollars, par value, on the following conditions and not otherwise, to wit:

1. Said capital stock shall be issued so as to net said company not less than par.

2. The proceeds from the sale of said stock shall be applied only to the following purposes, that is to say:

For the purchase of a lot for a new building, not to exceed.... \$4,000 00

For the erection of a telephone building on said lot, not to exceed ..... 8,000 00

For refunding promissory note for \$1,000 now held by Bank of Los Gatos ..... 1,000 00

For new construction as follows:

For additions to switchboard and protective equipment, not to exceed ..... 650 00

For aerial cables, not to exceed..... 1,600 00

3. Los Gatos Telephone Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the capital stock hereby authorized to be issued, and on or before the twenty-fifth day of each month the company shall make verified re-

ports to the Railroad Commission, stating the sale or sales of said capital stock during the previous month, the terms and conditions of sale, the moneys realized therefrom and the use and application of such moneys, all in accordance with this Commission's General Order No. 24,\* which in so far as applicable is made a part of this order.

4. This order shall become effective only when applicant's authorized capital stock has been increased in the manner specified by the statutes of this State, so that applicant's articles of incorporation authorize the issue of all the stock covered by this order.

5. The authority hereby given to issue capital stock shall apply only to capital stock issued by Los Gatos Telephone Company on or before the first day of April, 1914.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 24th day of March, 1913.

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IN THE MATTER OF STOCKS, BONDS AND OTHER EVIDENCES OF  
INDEBTEDNESS ISSUED BY PUBLIC UTILITIES DURING THE  
YEARS 1911 AND 1912.

General Order No. 34.

*Approved April 19, 1913—Effective June 1, 1913.*

Statements of Securities Issued During 1911 and 1912.

*Ordered,* That all public utilities file statements showing all stock, bonds and other evidences of indebtedness issued during the years 1911 and 1912, the net cash or other consideration realized therefrom and the purposes to which the proceeds were devoted.†

ORDER.

It is hereby ordered that all public utilities of every kind and character (including common carriers) operating within the State of California, shall file with the Railroad

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\*Printed in Commission Leaflet No. 9, at page 82.—Ed.

†Editor's headnote.

Commission on or before the effective date of this order, verified statements showing the following information:

1. An itemized statement of new issues (not transfers) of stock certificates issued during the years 1911 and 1912, giving the number of the certificate, the number of shares of stock covered thereby, and the par value of said shares of stock and the date of issue of the certificate.

2. The net cash realized from each certificate issued, or, if issued for a consideration other than cash, an itemized description of such consideration.

3. The purposes to which the proceeds of said stock were devoted.

4. An itemized statement of bonds issued during the years 1911 and 1912, giving the numbers of the bonds, the face value thereof, the date of issue, and the type of the bond.

5. The net cash realized from each bond, or, if issued for a consideration other than cash, an itemized statement of the consideration received.

6. The purposes to which the proceeds from the issue of said bonds were devoted.

7. Notes or other indebtedness issued between January 1, 1912, and the date of the return on this order, giving the face value of note, the date of issue and its term.

Attention is drawn to section 52 (b) of the Public Utilities Act, providing that notes for not more than twelve months may be issued for the first time without the consent of the Commission, "but no such note shall, in whole or in part, be refunded by any issues of stocks or stock certificates, or of bonds or notes of any term or character or any other evidence of indebtedness, without the consent of the Commission."

8. The net cash realized for each note or other evidence of indebtedness, or, if issued for a consideration other than cash, an itemized statement of such consideration.

9. The purposes to which the proceeds from such notes or other evidences of indebtedness were devoted.

This order shall become effective on June 1, 1913.



IN THE MATTER OF THE APPLICATION OF NEW FREEPORT TELEPHONE AND TELEGRAPH COMPANY FOR PERMISSION TO MAKE INCREASE IN RATE FOR LOCAL SWITCHES FOR SUBSCRIBERS.

Application No. 309—Decision No. 603.

*Decided April 25, 1913.*

**Increase of Rates for Local Switching Denied—Failure to Justify Advances—Switching Arrangements with The Pacific Telephone and Telegraph Company.**

This application for permission to increase the rates for local switching was denied because the applicant had failed to justify the proposed advances and a modification of the switching arrangements with The Pacific Telephone and Telegraph Company had been secured which would materially increase the applicant's revenue.\*

**APPEARANCES:**

*W. H. Devlin*, for applicant.

*H. D. Pillsbury*, for The Pacific Telephone and Telegraph Company.

**OPINION.**

**GORDON, Commissioner:**

This is an application to raise telephone rates. A hearing held in Sacramento, California, developed a peculiarly complicated telephone situation, arising from the vague use of telephone terms. To quote the language of the application:

"That applicant desires to increase the rate or charge for the rental of each telephone so as to substitute in lieu of the present rate therefor the following rate, to wit:

"For rental of each telephone one dollar and fifty cents (\$1.50) per month with the privilege of fifteen (15) local switches of not to exceed three (3) minutes each in length and an additional charge of five cents (5c.) for each minute, or fractional part thereof, over said initial period of three (3) minutes.

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\*Editor's headnote.

"An additional charge of ten cents (10c.) will be made for each local switch, of not to exceed three (3) minutes each in length, in excess of fifteen (15) switches during any month, and five cents (5c.) for each minute, or fractional part thereof, over said initial period of three (3) minutes."

The present rental applying to applicant's telephones is "fifty cents (50c.) per month with unlimited use thereof for conversations with subscribers on the same line and with whom connection is not made through Central."

A subsequent investigation by the Commission was necessary in order to secure any adequate understanding of the real merits of the case. Neither the investigation of the Commission nor the testimony developed at the hearing has justified the advance in rates as requested. Investigations of the Commission have, however, enabled the applicant company to secure modified switching arrangements with The Pacific Telephone and Telegraph Company which will materially increase applicant's revenue. In view of this additional revenue and of the failure of applicant to justify the rates asked for, I think we are warranted in dismissing this application, in view of which I recommend the following order:

#### ORDER.

Application having been made by New Freeport Telephone and Telegraph Company for permission to make increase in rates for local switches for subscribers, and a hearing having been held and no sufficient justification for such advances having been developed, although the applicant's financial condition has been materially improved by the incidental investigations of this Commission,

*It is hereby ordered*, That the application of New Freeport Telephone and Telegraph Company for permission to make increase in rates for local switches for subscribers be and the same is hereby dismissed without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 25th day of April, 1913.

## CONNECTICUT.

### Public Utilities Commission.

*In re* REPORT OF ACCIDENT OCCURRING AT SUFFIELD ON THE  
27TH DAY OF DECEMBER, 1912, RESULTING IN INJURY TO  
MISS GERTRUDE M. GARITY. MODIFICATION OF RECOM-  
MENDATIONS.

Docket No. 638.

*Dated April 28, 1913.*

#### Recommendations Modified, Especially with respect to Inspections of Telephone Lines.

The Commission amended its previous recommendations\* in several minor respects and further modified them so as to provide that the requirements with respect to inspections shall not apply to telephone lines located in suburban districts where there is no possibility of contact with the plant, wires or structures of electric light and power or street railway companies.†

The recommendations\* made by the Commission in its report‡ of the above entitled accident case are hereby modified and amended to read as follows:

#### RECOMMENDATIONS.

As a means whereby similar accidents may be avoided in the future, the Commission suggests and recommends to The Northern Connecticut Light and Power Company, to The Southern New England Telephone Company, and generally to each and every other public service company generating, transmitting or supplying for public, general or other uses in this State, electrical energy of any character:

FIRST: That each such company institute a careful, systematic inspection of all its overhead plant, lines, devices

\*Printed in Commission Leaflet No. 17, at page 680.—Ed.

†Editor's headnote.

‡Printed in Commission Leaflet No. 17, at page 676.—Ed.

and appliances by means of which it conveys or transmits such electrical energy, such inspection to be made semi-annually, the first inspection to be made during the months of April and May and the second inspection to be made during the months of October and November of each year, and that a general inspection be made in addition thereto promptly after every heavy rain, sleet, snow or wind storm, or other disturbance or circumstance whereby such plant, lines, devices or appliances may have become disarranged and rendered dangerous to life or property. (This provision shall not apply to those sections of the lines of telephone companies located on poles in suburban districts where there is no possibility of contact with the plant, wires, or structures of electric light and power or street railway companies.) That the person or persons making such inspection shall be competent to render such service and be employed by and responsible to the public service company supplying such electrical energy.

**SECOND:** That the person or persons making such inspection shall make a written report thereof, giving a comprehensive description of the location, circumstances and explanatory details of any apparently dangerous condition found, with dates as to when discovered, and condition in which it was left at the time of the inspection. Such report to be made in duplicate and a copy thereof filed at the office of this Commission within ten (10) days after said inspection.

**THIRD:** Joint usage of a single line of party poles under proper regulations, by all public service companies having authority to establish and maintain poles and wires in public highways and streets within this State. All of said party poles to be of proper size and kind for the safest construction, operation and maintenance of the lines, devices and fixtures of each occupant. Each occupant to have a defined right of way on said poles.

**FOURTH:** In all cases where two or more companies occupy the same poles, the construction and arrangement to be substantially according to the rules prescribed by The National Electric Light Association.

We hereby determine and direct that notice of the foregoing be forwarded to all public utility corporations of the State coming under the jurisdiction of this Commission and maintaining a line of poles and wires for the transmission of electricity.

Dated at Hartford, Conn., this 28th day of April, A. D. 1913.

## GEORGIA.

### Railroad Commission.

#### *In re* APPLICATION OF THE FRUIT BELT TELEPHONE COMPANY FOR AUTHORITY TO INCREASE RATES FOR LOCAL EX- CHANGE TELEPHONE SERVICE AT FORT VALLEY, GEORGIA.

File No. 9785.

*Decided April 22, 1913.*

#### **Increase in Rates.**

On February 15, 1911, the Fruit Belt Telephone Company applied for authority to increase its rates for telephonic service but owing to the development of strong local opposition, this application was withdrawn on March 18, 1911.

On February 14, 1913, application was again made to increase the rates of \$3.00 per month for special line business telephones; \$2.50 for duplex line business telephones; \$1.50 for special line residence telephones; and \$1.25 for duplex line residence telephones, to \$3.50; \$3.00; \$2.00; and \$1.50, respectively, on the ground that the existing rates were insufficient to yield a reasonable return on the investment after deducting a sufficient amount for operating expenses, maintenance and depreciation. It appeared that the applicant's franchise provided for a reasonable increase in rates upon the installation of 350 telephones, and that more than that number had been installed. The applicant claimed that after allowing 6 per cent. for depreciation, the return earned under the existing rates was only 3.89 per cent. on the commercial value of the plant (\$28,671.52), which represented the present value increased by 20 per cent. for going value. It was contended by those opposing the increase that no allowance should be made for depreciation.

On April 22, 1913, the Commission authorized the applicant to increase its rates for residence telephones to \$2.00 for special line and \$1.50 for duplex line telephones.\*

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\*Editor's note prepared from record.

**ORDER.**

Upon consideration of the record in the above entitled matter, and of the evidence and argument submitted at the several hearings had thereon, it is

*Ordered*, That, on and after June 1, 1913, and until the further order of this Commission, the maximum rates allowed to be charged by the Fruit Belt Telephone Company for local exchange telephone service at Fort Valley, Georgia, shall be as follows:

**PER MONTH**

For unlimited special line business station..	\$3.00
For unlimited duplex line business station...	2.50
For unlimited special line residence station...	2.00
For unlimited duplex line residence station..	1.50



## NEW YORK.

### Public Service Commission—Second District.

IN THE MATTER OF THE COMPLAINT OF F. W. KERR AGAINST  
THE NEW YORK TELEPHONE COMPANY, AS TO TOLL  
CHARGES BETWEEN BAY RIDGE AND OTHER POINTS.

Case No. 2720.

IN THE MATTER OF THE COMPLAINT OF THE SOUTH SIDE BOARD  
OF TRADE AND OTHER PATRONS OF THE NEW YORK TELE-  
PHONE COMPANY IN BAY RIDGE AND VICINITY, BROOKLYN,  
AGAINST SAID COMPANY AS TO RATES.

Case No. 2725.

IN THE MATTER OF THE COMPLAINT OF THE FLATLANDS PROP-  
ERTY OWNERS' ASSOCIATION AGAINST THE NEW YORK  
TELEPHONE COMPANY, AS TO TOLL CHARGES IN THE  
"MIDWOOD" SECTION, BROOKLYN.

Case No. 2970.

*Decided May 21, 1913.*

#### Reduction of Certain Toll Rates within the City of New York.

Upon complaint as to the toll rates from Bay Ridge, Coney Island, and other localities constituting the respondent's zone 7, to certain other points within the city of New York, comprising the respondent's zones 1, 2 and 5, contending that the exchanges in zone 7, which were formerly included with the other exchanges in the Borough of Brooklyn, should enjoy the same local service privileges extended to the other exchanges in Brooklyn, the Commission, by its order, reduced the toll rate between zone 7 and zone 1 from 10 cents to 5 cents and the rate between zone 7 and zone 2 from 15 cents to 10 cents and extended the free local service area enjoyed by subscribers in zone 6, to those in zone 7.\*

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\*Editor's headnote.

## ORDER.

The territory where these complaints have originated is south of a line beginning at 65th Street in or near Bay Ridge, a part of the Borough of Brooklyn, and extending for most of the distance along a branch of the Long Island Railroad. Respondent denominates the territory south of said line by certain named areas as follows: Bay Ridge, Bath Beach, Midwood, Coney Island and Canarsie. These constitute respondent's present zone 7. The chief complaint is against respondent's 10 cent telephone toll rate from this zone 7 to respondent's Manhattan zone 1. Incidentally complaint is also made of an increased toll rate from 10 cents to 15 cents to Upper Manhattan and the Bronx, comprising that portion of New York City known as respondent's zone 2, and complaint is also made of the establishment of a 10 cent toll rate by respondent to Astoria and Hunter's Point, comprising respondent's zone 5. Complainants contend that the toll rate from this section to Manhattan, zone 1, should be 5 cents, that the rate to zone 2 should be 10 cents, and that these localities, Bay Ridge, Bath Beach, Midwood, Coney Island and Canarsie, which constitute respondent's zone 7, should have the same free local service area as is now enjoyed by subscribers in respondent's zone 6, which constitutes the remainder of the Borough of Brooklyn. Bay Ridge and these other localities now constituting respondent's zone 7 were formerly included with the other exchanges in Brooklyn and as such enjoyed local service to Astoria and Hunter's Point, just as the zone 6 exchanges in Brooklyn do now. These cases having been duly heard, the Commission, after due consideration, is of the opinion that the complaints should be sustained, and accordingly it is

*Ordered*, (1) That respondent, New York Telephone Company, be and is hereby directed and required to cease and desist on or before June 1, 1913, from charging or collecting any greater rate or sum than 5 cents as a toll rate from subscribers' stations in Bay Ridge, Bath Beach, Midwood, Coney Island and Canarsie, comprising respondent's present zone 7, on the one hand, to Manhattan, comprising respondent's present zone 1, on the other, and from sub-

scribers' stations in said Manhattan zone 1, on the one hand, to Bay Ridge, Bath Beach, Midwood, Coney Island and Canarsie, comprising respondent's present zone 7, on the other.

*Ordered*, (2) That respondent, New York Telephone Company, be and is hereby directed and required to cease and desist on or before June 1, 1913, from charging or collecting any greater rate or sum than 10 cents as a toll rate from subscribers' stations in Bay Ridge, Bath Beach, Midwood, Coney Island and Canarsie, comprising respondent's present zone 7, on the one hand, to respondent's present zone 2, including Upper Manhattan so-called and Melrose and Tremont, on the other, and from subscribers' stations in respondent's present zone 2, including Upper Manhattan so-called and Melrose and Tremont, on the one hand to Bay Ridge, Bath Beach, Midwood, Coney Island, and Canarsie comprising respondent's present zone 7 on the other.

*Ordered*, (3) That respondent, New York Telephone Company, be and is hereby directed and required on or before June 1, 1913, to extend all of the local service privileges now afforded to subscribers in its present zone 6 to subscribers in Bay Ridge, Bath Beach, Midwood, Coney Island and Canarsie, comprising respondent's present zone 7, among which said local service privileges will be local service between said zone 7 areas and respondent's zone 5, including Hunter's Point and Astoria.

*Ordered*, (4) That respondent, New York Telephone Company, shall notify this Commission on or before May 27, 1913, whether it accepts and will obey the provisions of this order.

IN THE MATTER OF TOLL RATES CHARGED BY THE NEW YORK  
TELEPHONE COMPANY WITHIN THE CITY OF NEW YORK.

*Dated May 21, 1913.*

Investigation of Toll Rates within the City of New York.

ORDER.

The Commission having on this date ordered the New York Telephone Company to reduce its toll rate from Bath Beach, Coney Island and other points in its present zone 7 to Manhattan zone 1 from 10 cents to 5 cents; and it appearing to the Commission that with such reduction of toll rate in effect, considering the length of haul thereby involved, investigation should be made immediately into the toll rates charged from all other points within the city of New York to respondent's Manhattan zone 1, and also from all points within the city of New York to respondent's Manhattan zone 2, and further, in relation to the toll rates charged by respondent as between its zones or exchange areas on Long Island which are included within the city of New York, to the end that the reasonableness of toll rates between all parts of the city of New York shall be inquired into and determined, it is

*Ordered,* That a proceeding of inquiry and investigation into and concerning all telephone toll rates between points in the city of New York be and the same is hereby instituted and that the New York Telephone Company be and is hereby made the respondent in such proceeding.

*Further ordered,* That this proceeding be and it is set down for hearing in the Assembly Room, Metropolitan Building, 1 Madison Avenue, New York City, on Tuesday, May 27, 1913, at ten o'clock, A. M., at which time and place the respondent, New York Telephone Company, is hereby directed to appear by its suitable representatives prepared to make such showing in this proceeding as may be required.

## **OKLAHOMA.**

### **Corporation Commission.**

**MAY AND DOBY SPRINGS TELEPHONE COMPANY, COMPLAINANT,  
vs. THE FORT SUPPLY TELEPHONE AND TELEGRAPH COM-  
PANY, DEFENDANT.**

**Cause No. 1755—Order No. 698.**

*Decided April 11, 1913.*

#### **Physical Connection.**

Complaint by the May and Doby Springs Telephone Company, asking for physical connection of its "clear wire" from May to Buffalo with the lines of The Fort Supply Telephone and Telegraph Company, which also connected these points, and further objecting to an extra charge of ten cents per message made by the Fort Supply Company for switching messages from the complainant's line, in addition to the regular toll rates.

#### **Jurisdiction over Mutual Telephone Companies.**

*Held:* That the complainant is not under the jurisdiction of the Commission since its lines are operated without profit and for mutual benefit only;

#### **Duplication of Facilities.**

*Held:* That the existence of two telephone companies affording identical facilities in the same community constitutes a burden rather than a convenience and should not be encouraged;

#### **Physical Connection of Lines Reaching Common Points.**

*Held:* That the defendant's objection to handling the complainant's "clear wire" as a toll line without extra charge for switching, for the reason that its own line reaches the same points, is not unreasonable;

#### **Switching Charges.**

*Held:* That the defendant's offer to perform switching service for the complainant's "clear wire" at a flat rate of \$5.00 per month coincides with the rate generally charged for similar service throughout the State.

#### **Order.**

*Ordered,* That The Fort Supply Telephone and Telegraph Company connect the complainant's "clear wire" with its Buffalo switchboard and switch the line for all business common to lines of such character at a rate not to exceed \$5.00 per month.\*

\*Editor's headnote.

## FINDINGS OF FACT, OPINION AND ORDER.

*By the Commission:*

This case was called for hearing April 8th, in the offices of the Commission, and by agreement a statement of facts was made by the representative of each company.

Statement made by the representative of the complainant shows that the May and Doby Springs Telephone Company is a mutual company, incorporated to operate a mutual telephone system connected to several lines; that it owns no central offices but connects its lines with the switchboard of the Stockholm Southwestern Telephone Company, a mutual company at Doby Springs; one rural party line is connected with the Pioneer Tel. and Tel. Co. switchboard at May; it also has a "clear wire line" connected with the May exchange which runs to Buffalo via Doby Springs and connects at both places. This line is used as a toll line and the revenues accruing therefrom are used to defray the expense of maintaining all lines, this to lessen the burden of maintenance expense on the stockholders. The rates charged for toll service over this line are—for a message from May to Doby Springs, stockholders 10 cents and non-stockholders 15 cents for a three minute message; from Doby Springs to Buffalo, the same rate as the May-Doby rate; from May to Buffalo, 25 cents for a three minute message. On all incoming messages to Buffalo over this line the Fort Supply Company has been charging ten cents per message extra as a switching charge for handling. This extra charge complainant objects to and asks that the connections be made and that only a reasonable charge be asked for handling.

The defendant states that it is a corporation organized under the laws of the State of Oklahoma for the purpose of operating a telephone plant for profit. That it has telephone exchanges at Supply, Buffalo, Knowles, Laverne, May and other points with toll lines connecting. That the town of Doby Springs is west of Buffalo and that one of its principal toll lines passes through the town and connects with the switchboard in the exchange at that place. That its toll lines from May to Buffalo via Supply are in the best of condition and that the facilities for handling toll messages from Doby

Springs and May to Buffalo are more efficient than those afforded by the complainant. And further that to handle messages originating on the lines of complainant without making an extra charge of ten cents per message would be detrimental to its own business. The defendant states further that the complainant is now indebted to it in the sum of \$175.00 and that to continue to handle the line on the same basis is not profitable. That it has offered and is willing at any time to handle complainant's "clear wire line" for a flat rate of \$5.00 per month and switch the line for all rural business common to such lines.

It is the opinion of the Commission that the facts as stated clearly indicate that the complainant company is operating its lines for mutual benefits only and not for profit and therefore is not under the jurisdiction of the Commission.

The objection of the defendant company to handling the "clear wire" of complainant as a toll line, for the reason that its own lines connect with the same points, and afford equal facilities, does not appear unreasonable. Two telephone companies affording identical facilities in the same community constitute a burden, not a convenience, and in the opinion of the Commission should not be encouraged. The offer of defendant to switch the "clear wire" of complainant for the flat rate of \$5.00 per month coincides with the rate generally charged for this class of service throughout the State and the Commission finds that connection should be made on that basis.

*It is, therefore, ordered,* That The Fort Supply Telephone and Telegraph Company shall connect the "clear wire" of the May and Doby Springs Telephone Company with its switchboard at Buffalo and shall switch the line for all business common to lines of such character now being operated by it and other telephone companies, and for such service shall receive compensation, not to exceed five dollars per month.

This order to take effect the 1st day of May, 1913.

Dated at Oklahoma City, Oklahoma, this 11th day of April, 1913.

BYRON MUTUAL TELEPHONE COMPANY, BYRON; CITIZENS TELEPHONE COMPANY, DRIFTWOOD; AMORITA TELEPHONE COMPANY, AMORITA; CHEROKEE RURAL TELEPHONE COMPANY, CHEROKEE, PLAINTIFFS, vs. PIONEER TELEPHONE AND TELEGRAPH COMPANY, DEFENDANT.

Nos. 508 and 627—Order No. 678b.

*Dated April 23, 1913.*

Suspension of Order No. 678a\* Pending Appeal Therefrom—Bond for Refund of Overcharges—Reports of Charges Collected Pending Appeal.

### ORDER.

The above defendant, the Pioneer Telephone and Telegraph Company, having appealed from the decision of the Commission,† prescribing certain classes of service to be rendered independent telephone exchanges within a certain distance, and having filed a suspension bond that has been approved by the Commission which is, for the present time, sufficient in amount and security to insure the prompt refunding by the defendant of all charges which said defendant may collect or receive, pending the appeal, which in any way conflict with the enforcement of Order No. 678a\*, which prescribes the class of service to be rendered the plaintiffs,

*It is ordered*, That said order be and is hereby suspended pending the appeal and final determination of said cause by the Supreme Court of Oklahoma.

*It is further ordered*, That the defendant, the Pioneer Telephone and Telegraph Company, shall make a separate statement, verified by oath, the fifteenth day of each month for the business of the preceding month, to the Commission, showing the amounts charged and received for the various classes of service rendered each one of the plaintiff companies or any subscriber or patron thereof affected by the order, to whom such charges will be refundable in the event the charges made by the defendant, pending the appeal, be not sustained on such appeal.

Dated at Oklahoma City this 23d day of April, 1913.

\*Printed in Commission Leaflet No. 17, at page 728.—Ed.

†Printed in Commission Leaflet No. 17, at page 718.—Ed.



Cause No. 1728—Order No. 700.

*Decided April 30, 1913.*

**Physical Connection of Long Distance Lines with Local Exchange.**

Upon complaint asking for physical connection between the Choctaw Telephone Exchange in the Town of Soper and the long distance lines of the defendant passing through the town, it appeared that the defendant's lines had been connected with the exchange of the Citizens' Telephone Company in that town prior to the building of the Choctaw Telephone Exchange.

**Duplication of Facilities.**

*Held:* That two telephone exchanges in any town are an inconvenience to the public, but where there are two exchanges in a town of the size of Soper, about 250 people, the service is usually worth about two-thirds as much as if all the telephones were connected with one exchange.

**Physical Connection with More Than One Exchange in Same Town.**

*Held:* Affirming Grant County Rural Telephone Company vs. Pioneer Telephone and Telegraph Company, that it would be unreasonable to require a company operating long distance lines, which is affording reasonable facilities by an established physical connection with one exchange in a town, to connect directly with as many exchanges as may thereafter be established in the town, but connections should be established through the first exchange.

**Jurisdiction of Commission to Prescribe Rules and Regulations Governing Physical Connection.**

*Held:* That the Commission has jurisdiction to prescribe the rules and regulations under which physical connection shall be established.

**Compensation for Service Rendered through Physical Connection.**

*Held:* Affirming Grant County Rural Telephone Company vs. Pioneer Telephone and Telegraph Company, that the exchange with which physical connection was first established should receive whatever compensation may accrue from the long distance business handled and should not be required to compensate other exchanges for long distance business originating with them, the handling of which should be regarded as a service to those exchanges.

**Expense of Establishing Connection.**

*Held:* That the entire expense of establishing physical connection between a second exchange and the exchange already connected with the long distance line should be borne by the second exchange.

**Parties to Proceeding.**

*Held:* That no order can be made because the Citizens' Telephone Company has not been made a party to this proceeding.\*

**FINDINGS OF FACT, OPINION AND ORDER.***By the Commission:*

The principal complainant in this case is the owner of the Choctaw Telephone Exchange in the town of Soper. The complaint alleged in substance that the Choctaw Telephone Exchange, which is owned by Mr. Davenport, is located in the town of Soper and has in operation about fifty telephones, and applications for almost one hundred other telephones; that the Pioneer Telephone and Telegraph Company operates long distance lines through the town of Soper; and the complainant prays that the Pioneer Company permit its long distance lines to be connected with the Choctaw Telephone Exchange to accommodate the subscribers of that exchange.

At the hearing in the case the Pioneer Company objected to making the connection prayed for, stating that there was a telephone exchange operated in the town of Soper owned by the Citizens' Telephone Company with which exchange the defendant's toll lines had been connected prior to the building of the exchange by the Choctaw Telephone Company, and to connect with two exchanges in the same town would be confusing and would create an unreasonable and undesirable condition in telephone service.

The sole question to be determined by the Commission in this case is, can a company operating long distance telephone lines which makes a connection with an exchange in a town, which affords reasonable facilities for the people of the town, be required to connect directly with as many exchanges as may be established in a town, whether one or a dozen, or must all connections for long distance be made through facilities already afforded?

Soper is a town of about two hundred fifty population. In a town of that size is seldom found more than one exchange. Two telephone exchanges in a town of any size are an inconvenience to the public. It may have a tendency for

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\*Editor's headnote.

a short time to reduce rates; yet at Soper the rates charged are about the same as charged throughout the state in towns of similar size. If a telephone exchange in a town is not giving proper service, the public has an adequate remedy by applying to the Commission, which has always acted very promptly in requiring proper service. The service to the subscriber where there are two exchanges maintained in a town of the size of Soper is usually worth about two-thirds as much as the service would be worth if the telephones were in one exchange. However, we must deal with the conditions at Soper as we find them.

In the case of the Grant County Rural Telephone Company vs. Pioneer Telephone and Telegraph Company, which the Commission decided some three years ago, the same identical questions were involved as are involved in this case. The Pioneer Company owned an exchange at Pond Creek and also the long distance lines, the only difference in the two cases being that the Pioneer Company in that case was offering long distance service to the public through its own exchange, and at Soper it has facilities for long distance service through the exchange of the Citizens' Telephone Company.

The Commission decided in the Grant County case that it would be unreasonable to require the Pioneer Telephone Company to connect complainant's exchange direct with the long distance wires, but ordered a connection through the exchange with which the Pioneer Company was already connected at Pond Creek. That is, if there were subscribers of the Grant County Telephone exchange who desired long distance service, they would first call the exchange to which their telephone was connected and thence long distance, and the operator of the Grant County exchange would put them in connection with the exchange where the long distance wires were directly connected. This case was appealed to the Supreme Court of the State of Oklahoma and was by that court affirmed; however, the opinion is still pending upon a motion for rehearing.

Section 5 of Article IX of the Constitution provides:

"All telephone and telegraph lines operated for hire shall each respectively receive and transmit each other's messages without delay or discrimination, and

make physical connection with each other's lines under such rules and regulations as may be prescribed by law, or by any commission created by the Constitution, or any act of the legislature for that purpose."

It is clear from Section 5 that the Commission has jurisdiction to prescribe the rules and regulations by which any physical connection may be made. Hence, in this case we see no reason to make an exception to our ruling in the Grant County Telephone case, which has been virtually affirmed by the Supreme Court of this State. In that case, the exchange that was first established received whatever compensation there was for the long distance service, that is, the messages that originated and came through Pond Creek exchange were handled by the Pioneer Company without any compensation to the Pond Creek exchange, merely as a means of furnishing facilities to the subscribers of that exchange. We see no reason to change that rule in this case.

The Supreme Court modified the opinion of the Commission in that case, wherein the Commission held that the Pioneer Company should pay for the equipment to make the connection in its exchange and that the complainant should pay for the equipment in its exchange, and run the line between the exchanges, to the effect that the Pond Creek Company must pay all the expense incurred in both offices in making the connection, which, applied to this case, would require the complainant to pay the expense in connecting the two exchanges at Soper.

An order carrying out the views of the Commission cannot be made in this case because the Citizens' Telephone Company at Soper has not been made a party to the proceeding. If the complainant desires that its exchange be connected with the Citizens' Telephone Company's exchange so that the subscribers of the Choctaw Exchange may secure long distance service as above indicated, it will be given leave to file amended complaint making the Citizens' Telephone Company a party to this proceeding. Otherwise the complaint will be dismissed.

Oklahoma City, April 30, 1913.

**EDITOR'S NOTE.**

On April 15, 1913, the Supreme Court of Oklahoma remanded the case of Pioneer Telephone and Telegraph Company, Appellant, vs. State of Oklahoma and Grant County Rural Telephone Company, Appellees, to the Corporation Commission, with instructions to take further evidence as to whether the exchange of the Grant County Rural Telephone Company in Pond Creek is a public service corporation and operated for hire, and as to whether the rural lines of said Company are operated for hire, and also to procure copies of the franchises under which said Company operates and to certify such evidence back to the Court within thirty days.

## **SOUTH DAKOTA.**

### **Board of Railroad Commissioners.**

**ALLI READ, COMPLAINANT, vs. NEBRASKA TELEPHONE COMPANY, DEFENDANT.**

**Complaint No. 1057.**

*Dated January 30, 1913.*

#### **Physical Connection Denied.**

Upon the defendant's refusal to comply with the petitioner's prayer for physical connection, it appeared that a connection already existed at Sturgis, which caused only the inconvenience of an additional transfer of about fourteen miles, and the petition was denied.\*

### **REPORT.**

This complaint, upon the refusal of defendant to comply with the prayer of the petitioner, was set for hearing and a full investigation was had covering the same points that were at issue in the previous hearing but making a further disclosure in the evidence that the connection asked for was already had at Sturgis and only caused an inconvenience of an additional transfer of about fourteen miles, and it thus appearing that the two systems were in operation through that connection, the prayer of the petitioner should, in the judgment of your commissioner, be denied.

Dated at Pierre, S. D., this 30th day of January. 1913.†

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\*Editor's headnote.

†This report, submitted by Commissioner W. G. Smith, was accepted by the Board of Railroad Commissioners and the petition was denied.—Ed.

922 SOUTH DAKOTA BOARD OF RAILROAD COMMISSIONERS.

IN THE MATTER OF THE INVESTIGATION INTO CERTAIN IRREGULARITIES AND DISCRIMINATIONS PRACTICED BY VARIOUS TELEPHONE COMPANIES IN THE OPERATION OF THEIR TELEPHONE LINES AND IN THE CONDUCT OF THEIR BUSINESS IN THIS STATE, AND THE FAILURE OF OTHER TELEPHONE COMPANIES TO COMPLY WITH THE LAWS OF THIS STATE.

*Dated April 24, 1913.*

Investigation of Telephone Companies with respect to Discriminations,  
Filing of Data, Depreciation Accounts and Discounts for  
Prompt Payment.

ORDER.

WHEREAS it has come to the knowledge of the Board of Railroad Commissioners of the State of South Dakota that certain irregularities and discriminations are practiced by various of the telephone companies in the operation of their telephone lines and the conduct of their business in this state, and that other telephone companies have not complied with the laws of this state,

*It is, therefore, ordered,* That a general investigation be conducted into the manner of conducting the telephone business of this state, and that hearings be held for the purposes of conducting such examination and investigation, the first hearing to be held at the club rooms of the Commercial Club of the city of Mitchell in Davison County, South Dakota, on the 17th day of June, 1913, at the hour of 10 o'clock in the forenoon, and the second hearing to be held at the club rooms of the Commercial Club of the city of Rapid City in Pennington County, South Dakota, on the 20th day of June, 1913, at 10 o'clock in the forenoon and that at such hearings there be taken up for consideration and investigation the following subjects:

Discrimination in the matter of charges made for telephone service to stockholders and persons who are not stockholders.

Extra charges exacted for delivering toll messages on local exchanges and rural telephone lines.

Discrimination in switching charges and connection fees and terminal charges.

Discrimination in furnishing of free telephone instruments and telephone service in connection therewith.

The necessity of filing all schedules of rates and all franchises and copies of all contracts or agreements with municipalities and telephone companies as required by law.

The making and filing of annual reports of telephone companies and contents thereof.

The necessity of procuring plats and maps of each telephone system in the state for the information and assistance of the Board and telephone companies.

The proper method to be adopted in handling the depreciation account and the amounts to be charged for depreciation.

The feasibility and advisability of naming and establishing a rental rate allowing for a discount if the rental is paid on or before a certain date, and the amount to be allowed for such discount.

All telephone companies doing business east of the Missouri River are required to be present by at least one representative at the hearing to be held at Mitchell, and all telephone companies doing business west of the Missouri River are required to be in attendance by at least one representative at the hearing to be held at Rapid City.

Done in regular session at Pierre, the Capital, on this 24th day of April, 1913.



## **VERMONT.**

### **Public Service Commission.**

#### **PETITION OF THE SPRINGFIELD LOCAL TELEPHONE COMPANY FOR AUTHORITY TO INCREASE ITS CAPITAL STOCK IN THE SUM OF \$6,000.00 AND MAKE THE PAR VALUE OF ITS SHARES \$100.00 EACH.**

*Decided April 25, 1913.*

#### **Authorization of Stock Dividend.**

Upon petition for permission to increase the petitioner's capital stock from \$2,000.00, divided into shares of \$25.00 each, to \$8,000.00, divided into shares of \$100.00 each, it appeared that the new stock was to be issued to the present stockholders in proportion to their holdings.

The Commission found that the petitioner's total assets amounted to about \$10,000.00; that its plant and equipment were in first class condition; that there was no competition; and that there was no intention of selling out, and granted the petition, providing that if any of the stock to be issued were sold, it should be sold at par for cash and the proceeds used only for the development, extension, renewal, repair and improvement of the petitioner's franchises and properties.\*

### **REPORT.**

This is a petition of the Springfield Local Telephone Company, a domestic corporation, setting forth a request for permission to increase its capital stock from Two Thousand Dollars, now divided into shares of Twenty-five Dollars each, to Eight Thousand Dollars divided into shares of One Hundred Dollars each.

After due notice of the time and place of hearing, including the substance of said petition, a hearing was had thereon at Springfield, Vermont, on April 24, 1913.

From the evidence we find that when the present company took over the plant in 1902, there was a credit balance for

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\*Editor's headnote.

profit and loss of \$751.52; that this credit balance has steadily increased until on July 1, 1912, it was \$5,034.62, and on the date of this hearing the amount was still greater; that it has accounts due of \$2,678.26, and owes about \$1,000; that its total assets amount to about \$10,000; that it has issued only two dividends during the time it has owned the plant, one of 6 per cent., January 1, 1912, and one of 10 per cent., August 26, 1912; and that all other profits have gone into the extension and betterment of the plant until the present time. We further find that the stock is owned by five persons and that it is the intention to issue said stock among the present stockholders in proportion to the holdings of each, and that none of said stock is to be sold; that the plant and equipment is in first class condition; that there is no competition; and that there is no intention of selling out to others.

### CERTIFICATE.

We hereby certify that we authorize the Springfield Local Telephone Company, a corporation organized and existing under the laws of Vermont, to increase its capital stock by issuing, at par value of One Hundred Dollars per share, to its present holders of stock in proportion to the amount now held by them, a total of Eight Thousand Dollars; and we order and direct that all existing shares of the par value of Twenty-five Dollars each be thereupon cancelled and made void. If any of such new shares are sold, such sale or sales shall be at par and for cash and the proceeds thereof shall be used only for the development, extension, renewal, repair and improvement of the franchises and properties of said corporation. And if said corporation does so increase its capital stock, it is hereby ordered to observe the foregoing conditions and directions, and, on or before June 30, 1913, and every six months thereafter until all of said stock has been so issued, to report to this Commission in writing, signed by its President and Treasurer, and verified by their oaths, reciting its doings under this certificate, the amount of capital stock so issued, the amount of the proceeds of the sale thereof, if such sale is made, and the application of such proceeds.

Dated at St. Albans, this 25th day of April, 1913.

## WISCONSIN.

### Railroad Commission.

#### *In re* APPLICATION OF THE MUSCODA MUTUAL TELEPHONE COMPANY FOR AUTHORITY TO INCREASE AND ADJUST RATES.

*Decided April 30, 1913.*

#### Increase and Adjustment of Rates—Free and Reduced Rate Switching Service—Discrimination.

Upon application by the Muscoda Mutual Telephone Company to increase and adjust its rates on the ground that the present rates do not yield sufficient income and are discriminatory, especially with respect to switching service, it appeared that the applicant operates a local exchange and rural lines and also furnishes switching service for several connecting lines.

The principal question at issue was the proper charge for switching the connecting lines. The applicant desired to increase the annual rate from \$3.00 per telephone to \$4.00, while the connecting lines claimed that the rate should be fixed between \$2.00 and \$3.00. Arrangements for free or reduced rate switching service existed in several instances, and, with respect to these, it was

*Held:* That the exchange of free switching service between two lines separately owned is permissible, since the free service is afforded indiscriminately to all subscribers who are similarly situated;

That a reduced rate for switching service for the reason that the connecting line is also connected with some other exchange to which it must contribute is not permissible since the applicant is entitled to compensation for the service rendered regardless of conditions at other points;

That the rental to be paid for the use of a connecting line should be sufficient to allow the owner 15 per cent. on his investment for taxes, depreciation and interest.

#### Valuation of Property—Depreciation—Rate of Return—Traffic Analysis.

The Commission made a valuation of the applicant's property, finding the reproduction cost new and the present value, and computed the annual cost of service, allowing 6.5 per cent. on the reproduction cost new for depreciation and 7 per cent. on the present value for interest. By means of a traffic analysis and the use of loading factors based on the time consumed by each class of calls, the cost of furnishing switching service was ascertained.

As a result of the computation, it was

*Held:* That the balance of revenues over expenses was not sufficient to provide a proper return to the stockholders; but that a charge of \$4.00 per telephone for switching service would be excessive and that the existing rate of \$3.00 was ample.

The Commission estimated the probable revenue under the rates proposed by the applicant with the exception that switching charges were figured at \$3.00 per telephone instead of \$4.00 and found that the net return would amount to 5 per cent. on the investment and 12 per cent. on the par value of the stock.

*Held:* That this return is sufficient in view of the fact that the applicant's stockholders look for good service rather than dividends.

#### **Discrimination between Stockholders and Non-Stockholders:**

*Held:* That all subscribers, whether stockholders or not, must pay the same rental.

#### **Rental of Equipment.**

*Held:* That an arrangement by which telephone instruments are furnished by stockholders as part payment for their shares of stock is proper, but that a rental equivalent to the interest on the investment should be paid by the applicant to all non-stockholders who own their instruments and that no rental to cover depreciation need be paid since all telephones are maintained and replaced by the applicant.

#### **Business and Residence Rates.**

*Held:* That a study of rates on file with the Commission indicates that a difference of \$3.00 per annum between business rates and residence rates is entirely reasonable.

#### **Extra Charge for Short Period Service.**

*Held:* That an extra charge of 25 cents per month for telephones installed for less than one year is proper.

#### **Extra Charges for Extension Sets and Bells.**

*Held:* That an extra charge for furnishing extension telephones and extension bells is customary and permissible.

#### **Discontinuance of Free Service.**

*Held:* That the free telephone service now furnished to the local post office and railway station should be discontinued.\*

### **DECISION AND ORDER.**

The Muscoda Mutual Telephone Company, on December 23, 1912, filed application with this Commission seeking authority to increase and adjust rates.

The rates in effect at the time of application as given in the petition are \$12.00 a year to non-stockholders for all classes of telephones, an annual assessment of \$10.00 upon stockholders, and a charge against connecting lines amounting to \$3.00 a year per 'phone in consideration of switching service.

\*Editor's headnote.

Application is made to increase and adjust rates on the grounds that the rates now in effect are unjust and discriminatory, particularly the rates obtained from connecting lines for switching; and that the income of the company is not sufficient to pay the charges for good service, to provide for betterments made necessary by growth of business, to maintain the property adequately and to allow the stockholders a proper return on the money invested.

To remedy existing conditions, the applicant asks that a uniform switching fee be established "high enough not to discriminate against the stockholders" of the company and that the following specific rates be permitted:

\$15.00 a year for business telephone.

\$12.00 a year for residence telephone in country and village.

\$ .25 a month additional charge where the telephone is in for less than one year.

An additional charge for extension telephone and extension bells.

\$18.00 a year for business telephone if on a metallic circuit. (At present common return is used.)

\$4.00 a year for switching for each telephone on lines not owned by this company, this rate to apply where lines run to this central only.

\$2.00 a year for switching for each telephone on lines connecting another exchange with the Muscoda exchange, or

In lieu of the above, such schedule as the Commission shall deem just and reasonable.

Hearing on these matters was held at Madison, February 20, 1913. *Dr. A. W. James*, Secretary of the Muscoda Mutual Telephone Company, appeared for the applicant, and *R. M. Orchard* appeared for the Pulaski Telephone Company, the Avoca-Muscoda Telephone Company, and the Basswood and Eagle Telephone Company, these three being companies among the connecting lines affected by the switching charges. From the testimony the following facts appeared:

Prior to December 9, 1911, the applicant gave limited service, the period of service being from 7 A. M., to 8:30 P. M. on week days and from 8 to 10 A. M. on Sundays. Subse-

quent to the filing of a petition with the Commission asking that the company be ordered to install 24 hour service, the company voluntarily provided such service, making an order of the Commission unnecessary. The Pulaski Telephone Company and other connecting lines had paid an annual switching rate of \$3.00 per 'phone during the time applicant gave limited service. This rate had been paid in advance and the Pulaski Company refused to pay the additional amount to make up the \$4.00 rate asked by the applicant for 24 hour service. There have been certain legal proceedings between the parties involved which need not be discussed here. This application was brought before the Commission for the purpose of determining the reasonableness of the \$4.00 switching fee.

It appears from the testimony that the applicant furnishes service to 450 'phones, 90 of which are village 'phones and 113 of which are rural 'phones, all on lines owned by the applicant. The remainder are 'phones belonging to connecting lines for which the applicant does a switching service. The 113 rural 'phones are connected to eight party lines owned by the applicant. Following is a description of these eight lines and of the connecting lines, as given in the testimony :

#### RURAL LINES OWNED BY APPLICANT.

No. 98—This line has 12 'phones. It connects the Muscoda exchange with the Lone Rock Telephone Company at Gotham. The two companies have made a geographical division of business according to which the applicant pays to this Gotham exchange a switching fee of \$3.00 each for 5 'phones.

No. 101—This line has 18 'phones and runs to a country switch known as Foley's switch through which applicant has connection with a Montfort company.

No. 102—This line has 21 'phones and does not connect with any foreign line, being the only line, in fact, which does not connect with one or more foreign lines.

No. 103—This line has 11 'phones and runs to a country switch, Hing's switch, through which it can connect with the Munz lines.

No. 113—This line has 8 'phones, and runs to a country switch known as Berren's switch, through which connections can be had with a Highland line.

No. 115—This line has 11 'phones and runs to a country switch known as Heffner's switch, through which applicant has connection with a Fennimore company.

No. 116—This line has 11 'phones and runs to Blue River.

No. 118—This line has 17 'phones and runs to Highland.

#### RURAL LINES OWNED BY FOREIGN COMPANIES.

HIGHLAND LINE—No. 89. (15 'phones) This line connects Muscoda with the Highland exchange. The Highland exchange gives free switching to Muscoda from line No. 118, and the Muscoda exchange gives free switching to Highland from its line No. 89.

OAKRIDGE TELEPHONE COMPANY—No. 104. (15 'phones) This connects Muscoda with Blue River and the exchange at Blue River switches free for applicant's line No. 116 in exchange for free switching at Muscoda.

"PIER LINES." Numbers 91, 94, 99 and 105 with 10, 15, 9 and 10 'phones respectively, making a total of 44 'phones. These lines are owned by Mrs. James. All four lines run into the applicant's switchboard and have no exchange of their own. The applicant company gives free switching to these 44 'phones in exchange for a Richland Center outlet as explained in the following paragraph.

THROUGH LINE TO RICHLAND CENTER—Two lines, numbers 96 and 110, are used as through lines to Richland Center and have no subscribers connected en route. The distance between Muscoda and Richland Center is about ten miles. For one-half of the distance out from Muscoda, i. e., about five miles, the lines are owned by Dr. James. From that point they are owned by the Farmers' Telephone Exchange of Highland Center. The applicant switches the 44 'phones on the "Pier Lines" in consideration of the free use of the Richland Center lines owned by Dr. James.

BASSWOOD AND EAGLE TELEPHONE COMPANY—For this company the applicant switches 56 'phones, distributed over five lines, numbers 97, 100, 106, 109 and 111. Prior to July 1, 1912, the Basswood and Eagle Telephone Company had not

made any payment to the applicant for switching but since that time has been paying on the basis of \$125.00 a year, considering about 30 'phones switched.

**MUNZ LINE**—No. 93. (16 'phones) Prior to January, 1913, this line paid \$3.00 per 'phone for switching, but since that time has paid on the basis of \$4.00 per 'phone.

**BYRD'S CREEK LINES**—No. 92 and No. 107. (32 'phones) Until August, 1912, these lines were switched at Eagle Corners but at that time began switching through Muscoda. The Byrd's Creek Lines connect with the Blue River exchange and receive a switching service from it as well as from Muscoda. The applicant has been charging the Byrd's Creek Lines \$2.00 per 'phone for switching on the ground that they must also support the Blue River exchange.

**PULASKI LINES**—Nos. 114 and 120. (39 'phones) These are the lines that have made the most objection to a \$4.00 switching fee. The Pulaski lines have since 1909 been paying \$3.00 per 'phone and refuse to pay the \$4.00 charge.

**AVOCA-MUSCODA TELEPHONE COMPANY**—Nos. 84 and 119. (21 'phones) These two lines connect Muscoda with the Avoca-Muscoda Telephone Company's exchange at Avoca. For several years past this company has paid nothing to the applicant and pays no switching fee at the present time.

In summarizing the existing arrangements with connecting lines it was shown on behalf of the applicant that the arrangement with the Highland and Blue River exchanges by which there was free exchange of switching is entirely satisfactory; that the Pier line agreement is open to question and might be remedied either by purchasing these lines with an issue of stock or else by charging them a switching fee and at the same time paying the "Pier Lines" a toll for the use of the Richland Center lines; that the Basswood and Eagle, the Munz and the Pulaski lines should pay a \$4.00 switching fee; that the present arrangement with the Byrd's Creek lines is satisfactory; and that the Avoca-Muscoda Telephone Company should be made to pay either a \$2.00 charge per 'phone (as in the case of the Byrd's Creek Line) or else pay a \$4.00 charge per 'phone on a geographical division of business.



The contention of the Pulaski line and the other lines is that the \$4.00 switching charge is excessive and that a lower rate should be established.

Testimony was given to the effect that service has been much better since 24 hour operation has been in force.

The principal arguments made in the brief for the Pulaski and other connecting companies may be summarized as follows:

1. That the charges now made by the applicant more than compensate it for the switching service furnished; that for the past two years the stockholders have received a rebate of \$2.00 a year, equal to about 10 per cent. on the par value of the capital stock; that the net earnings of the applicant are adequate to meet all legitimate expenses and to pay a reasonable dividend; and that when switching charges are added to the revenues the balance in favor of the applicant is such that rates could well be reduced rather than increased;

2. That the physical valuation as determined by the Commission is excessive;

3. That if lines 89 and 104 are exempted because they give mutual exchange, then the same arrangement should be allowed the Avoca-Muscoda Company; and that at least three of the "Pier Lines" should pay a switching fee, leaving the fourth free for through messages;

4. That the Wisconsin Telephone Company does not pay its proportionate share of costs in view of the fact that central gives first attention to its calls;

5. That as much time is taken in answering calls from the rural lines owned by the applicant as is required to answer calls on other rural lines and for this reason the applicant's rural lines should pay a proportion of the switching costs;

6. That the costs which the connecting lines should pay include a portion of operator's salary and cost of maintenance of central office, and a small part of the repair man's salary, but should bear no part of the expenses for wire plant or substation as the connecting lines maintain their own lines from the limits of the village outward;

7. That no fault is found with the service;

8. That a proper switching fee for connecting lines to pay would lie between \$2.00 and \$3.00 per 'phone.

#### PHYSICAL PLANT.

The physical plant of the Muscoda Mutual Telephone Company was inspected by one of the Commission's engineers for the purpose of making a valuation. The following summary of the somewhat complicated physical connections is given in his report:

"The Muscoda Mutual Telephone Company is a combination of a number of mutual farmers' telephone companies with a single exchange in the village of Muscoda. Local and foreign connections are given through a 150 drop Kellogg switchboard to 88 village telephones over "common return" or McClure and grounded lines, and to 115 rural 'phones over 8 grounded lines, all owned by the Muscoda Company. 18 foreign rural grounded lines with a total of 241 directly connected 'phones also enter the switchboard of the Muscoda Company, the patrons of which lines, by paying a fee per telephone per year, are given connection to any part of the system. The Muscoda Mutual Telephone Company owns all construction used by these foreign lines from approximately the village limits in to the switchboard. In some cases outside the village limits the foreign companies have wire on the Muscoda Company's poles. The apportioned valuation shows the total number of these contacts and their estimated physical value. 6 of the above 18 foreign lines connect the Muscoda exchange with the exchange of some other company. These 6 lines average 14 'phones per line besides the central offices at either end of the line. A number of the remaining 12 foreign lines have switches by means of which they can switch on to their line other rural lines when they so desire. Of the 8 rural lines owned by the Muscoda Telephone Company, 3 connect the Muscoda exchange with the exchanges of foreign companies and besides the switchboard connections at either end of the lines, average 13 'phones per line. 4 of the remaining 5 Muscoda lines have switches through which

connections are made to other lines. These 4 lines average 12 subscribers each. Thus there is only one rural line owned by the Muscoda company which does not connect with a foreign line or with a foreign exchange."

#### **PHYSICAL VALUATION.**

A valuation by the engineering department was made as of February 1, 1913, and a summary valuation arrived at as follows:

## FINAL SUMMARY VALUATION.

	RURAL		CITY		TOTAL	
	COST NEW	PRESENT VALUE	COST NEW	PRESENT VALUE	COST NEW	PRESENT VALUE
A. Land .....	....	....	....	....	....	....
B. Distribution System .....	\$7,777	\$5,457	\$1,797	\$1,456	\$9,574	\$6,913
C. Bldgs. and Misc. Structures.....	70	42	230	138	300	180
D. Exchange Equipment .....	118	98	386	320	504	418
E. Central Equipment .....	10	7	35	25	45	32
F. Paving .....	....	....	....	....	....	....
TOTAL .....	<u>\$7,975</u>	<u>\$5,604</u>	<u>\$2,448</u>	<u>\$1,939</u>	<u>\$10,423</u>	<u>\$7,543</u>
Add 12% (See Note Below) .....	957	672	294	233	1,251	905
TOTAL .....	<u>\$8,932</u>	<u>\$6,276</u>	<u>\$2,742</u>	<u>\$2,172</u>	<u>\$11,674</u>	<u>\$8,448</u>
H Material and Supplies .....	32	32	106	106	138	138
	<u>\$8,964</u>	<u>\$6,308</u>	<u>\$2,848</u>	<u>\$2,278</u>	<u>\$11,812</u>	<u>\$8,586</u>

NOTE: Addition of 12% to cover engineering, superintendence, interest during construction, contingencies, etc.

As an appendix to the main valuation a separate valuation was submitted of the property used by foreign, i. e., connecting, lines and owned by the Muscoda Mutual Telephone Company. This property has already been included in the Rural valuation and is only a segregated portion of that valuation. The apportionment to foreign lines is given below:

#### VALUATION OF PROPERTY USED BY FOREIGN LINES.

	COST	PRESENT
	NEW	VALUE
A. Land.....	None	None
B. Distribution System .....	\$502.00	\$382.00
C. Bldgs. and Misc. Structures (16% of Central Office Bldg.) .....	48.00	22.00
D. Exchange Equipment—Manual (16% of total) .....	81.00	67.00
E. General Euipment .....	None	None
F. Paving .....	None	None
<b>TOTAL</b> .....	<b>\$631.00</b>	<b>\$471.00</b>

#### INCOME ACCOUNT.

The operating revenues and expenses of the applicant must be closely scrutinized in order to determine the expense of the switching service and the revenues derived from that source as well as to determine what return the company gets on its investment as a whole. Very little assistance can be gotten from the reports on file with the Commission. The applicant has been reporting on a condensed blank and has failed to make proper distinction in its reports between expense and construction. An inspection of the company's books was made and it was found that no plant account had ever been kept and that only for the past calendar year has any separation been made between expenses and construction. Neither were the expenses classified in accordance with the classification of accounts. From this inspection, however, and from testimony offered at the hearing, an approximate income account has been constructed. As operating conditions have changed through the increase in salaries, taking on of additional help, etc., it will be best to consider the income account for the present rather than from past experience. The estimated expenses to be met annually are given

in the following table. Each item is fully explained by footnote.

### ESTIMATED EXPENSES.

#### CENTRAL OFFICE

1. Operators' Salaries .....	\$780.00	
2. Rent of Central Office Ground .....	5.00	
3. Power Expenses .....	16.00	
4. Misc. Supplies and Expenses.....	30.00	
5. Maint. of Central Office Equipment, Bldgs., etc.....	14.00	
		<hr/> \$845.00

#### WIRE PLANT EXPENSES

6. Labor .....	\$480.00	
7. Misc. Supplies and Expenses .....	40.00	
		<hr/> 520.00

#### SUBSTATION EXPENSES

8. Maintenance of Substation .....	\$155.00	
		<hr/> 155.00

#### COMMERCIAL AND GENERAL

9. General Salaries .....	\$150.00	
10. Misc. General Expenses .....	50.00	
		<hr/> 200.00

#### UNDISTRIBUTED

11. Insurance .....	\$ 7.00	
		<hr/> 7.00
12. DEPRECIATION .....	770.00	
13. TAXES .....	75.00	
		<hr/> 75.00

TOTAL OPERATING EXPENSES.....\$2,572.00

### EXPLANATORY NOTES.

1. This allows for two central office girls at a joint salary of \$45.00 a month and for two night boys at \$10.00 each a month.

2. \$5.00 is paid annually for ground rent.

3. This allows two changes a year for 50 dry cells at 16 cents each.

4. Made up as follows:

Electric Light 30 cents a month.....	\$ 3.60
Fuel—average cost for 5 years.....	21.00
Oil—for lamp lighting.....	1.10
Miscellaneous allowance—for sweeping and cleaning office, etc.....	4.30
	<hr/> \$30.00

5. To cover switchboard maintenance and repairs to small central office building. Actual repairs to switchboard last year were a little over \$5.00.

6. A lineman has been at work since about March 1 on a salary of \$40.00 a month. He may do work for the light plant and others from time to time providing that whatever he makes on such jobs up to \$2.00 per job shall go to the telephone company and the rest to him. The earnings from this source will probably not be large and will be offset by expense of transportation into the country.

7. This is an allowance to cover maintenance of cross arms, wire, etc., and is approximately what was spent on these items in 1912.

8. This figure is based on an allowance of 50 cents per year for village 'phones (which allows for two changes of batteries, 16 cents each, and other renewals) and an allowance of \$1.00 per year for rural 'phones. These allowances for substation are ample as labor is already covered in the lineman's salary, and transportation is partly offset by earnings from outside jobs done by the lineman.

9. General salaries, including both a manager's salary and clerk's pay, are placed at \$150.00. In former years the only officer's salary paid was \$30.00 to the secretary. In 1912, Dr. James received \$150.00 as secretary's pay and also in consideration of line and repair work. Now that a lineman has been engaged with a separate salary, the secretary is relieved of practically all outside work so that this allowance should be sufficient.

10. Directors' meetings are allowed for at \$30.00, (\$28.50 was paid in 1912), and postage, express, railroad commission expenses, printing, etc., make up the balance.

11. This is the amount of actual premium per year.

12. Depreciation is figured at 6.5 per cent. on the cost new.

13. Taxes are estimated on the basis of  $2\frac{1}{2}$  per cent. on a probable income of \$3,000.00.

## ESTIMATED EARNINGS—PRESENT BASIS.

The approximate earnings under rates and switching charges now in force are indicated in the following summary :

Rental from 84 village 'phones .....	\$1,008.00
Rental from 103 rural 'phones .....	1,236.00
Wisconsin Telephone Co. tolls .....	75.00
Local tolls .....	63.00
Revenues from switching:	
Basswood and Eagle lines, (based on 30 'phones)	125.00
Pulaski lines, 39 'phones at \$3.00* .....	117.00
Munz lines, 16 'phones at \$4.00 .....	64.00
Byrd's Creek lines, (based on 25 'phones) .....	50.00
	<hr/>
	\$2,738.00

\*Have refused to pay \$4.00.

With revenues of \$2,738.00 to offset expenses of \$2,572.00, it is apparent that the balance, \$166.00, will not supply a proper return to stockholders. Even if the return were sufficient it would be necessary to adjust the switching charge so as to remove inequalities.

## TRAFFIC ANALYSIS.

For the purpose of determining the extent of service furnished to connecting lines through switching service, a traffic analysis was made on February 19, 1913, by the Commission's engineers. The results are given in the table below :

## TRAFFIC STUDY OF MUSCODA MUTUAL TELEPHONE COMPANY.

Taken from 8:00 P. M., 2-18-13 to 8:00 P. M., 2-19-13.

## INCOMING CALLS SWITCHED THROUGH CENTRAL OFFICE.

FROM	TO	NUMBER OF CALLS	% OF TOTAL	TOTAL CALLS	% OF TOTAL INCOMING
Local	Local	165	20.21		
"	Rural	23	2.81		
"	Foreign	56	6.86		
"	Long Distance	11	1.34		
"	Richland Center	16	1.95		
		<hr/>	<hr/>		
	TOTAL LOCAL—INCOMING			271	33.17
	MISC. CENTRAL OFFICE	94	11.50	94	11.50
Foreign	Local	58	7.09		
"	Rural	36	4.40		
"	Foreign	113	13.80		
"	Richland Center	44	5.38		
		<hr/>	<hr/>		
	TOTAL FOREIGN—INCOMING			251	30.67



FROM	TO	NUMBER OF CALLS	% OF TOTAL	TOTAL CALLS	% OF TOTAL INCOMING
Rural	Local	29	3.54		
"	Rural	36	4.40		
"	Foreign	40	4.88		
"	Richland Center	15	1.83		
TOTAL RURAL—INCOMING				120	14.65
Richland Ctr.	Local	13	1.59		
"	" Rural	8	.98		
"	" Foreign	44	5.37		
TOTAL RICHLAND CENTER— INCOMING				65	7.94
Long Distance	Local	11	1.34		
"	" Foreign	2	.24		
"	" Central Office	4	.49		
TOTAL LONG DISTANCE— INCOMING				17	2.07
TOTAL INCOMING				818	100.00

## OUTGOING CALLS SWITCHED THROUGH CENTRAL OFFICE.

LINE	NUMBER OF CALLS	% OF TOTAL
Total Local Outgoing .....	276	38.37
Total Foreign Outgoing .....	255	35.42
Total Rural Outgoing .....	103	14.3
Total Long Distance Outgoing .....	11	1.52
Total Richland Center Outgoing .....	75	10.39
TOTAL OUTGOING .....	720	100.00

## CALLS ON PARTY LINES NOT SWITCHED THROUGH CENTRAL OFFICE.

FROM	TO	NUMBER OF CALLS	% OF TOTAL
Local	Local	12	2.20
Rural	Rural	138	25.40
Foreign	Foreign	393	72.40
TOTAL NOT SWITCHED		543	100.00

NOTE: The above calls are not included elsewhere.

The difference between outgoing and incoming calls is accounted for by busy calls and other calls terminating at central office.

The summary of calls on party lines not switched through central office shows that there were 543 calls passing through

the switchboard that were merely signals between parties within one class of subscribers. These calls have to be watched by central in order to get her own signal, and as in this instance the calls not switched were about 66% of the number of calls switched, considerable attention must be given to such calls. Allowing for the relative time required to attend to different calls and allowing for time of watching calls not switched, loading factors for both incoming and outgoing calls have been adopted as follows:

	FACTOR
Local to Local .....	1.0
Local to Rural .....	1.25
Local to Foreign .....	1.25
Local to Richland Center .....	1.0
Local to Long Distance .....	1.5
Foreign to Richland Center .....	1.25
Foreign to Rural .....	1.25
Foreign to Foreign .....	1.25
Foreign to Long Distance .....	1.5
Rural to Richland Center .....	1.25
Rural to Long Distance .....	1.5
Rural to Rural .....	1.25

Before applying these factors to the calls switched through central office, the "Miscellaneous" calls to central office were distributed. These miscellaneous calls are busy calls and requests for time, all of them terminating at central office. From the details of the traffic study the source of such calls has been determined and then the number coming from each source has been divided as to intended destination in the same proportion as the calls actually completed were divided. The loading factors were then applied to the number of calls completed in each instance plus the proportion of calls terminating at central office and a product obtained.

The next step was to group these products under four divisions,—local, rural, foreign, and long distance. Calls to or from Richland Center were treated as calls to or from foreign lines. The products for calls between two classes or groups were divided in half between the two classes on the assumption that the benefit divides evenly at both ends. The summary results of these analyses are given below:

	NUMBER OF CALLS X FACTOR	APPROXIMATE PER CENT.
Local	331.37	34.
Rural	173.12	18.
Foreign	450.76	46.
Long Distance	21.75	2.
<b>Total</b>	<b>977.00</b>	<b>100.0</b>

The percentages thus determined form the basis for apportioning central office expenses. The apportionment of these and other expenses will be affected by the adjustment of the in-equalities in present switching charges.

#### IN-EQUALITIES IN SWITCHING CHARGES.

In the description of rural lines it was explained that in a number of instances free exchange of service is allowed. Two of these instances seem fairly equitable. These two instances are the arrangements with Highland and Blue River. Reference to the description of lines will show that the applicant owns a line with 17 'phones connected running to Highland, while the Highland Company owns a line with 15 'phones connected running to Muscoda. Neither exchange pays a switching fee to the other. In a similar manner the applicant owns a line with 11 'phones running to Blue River, while the Blue River company owns a line with 15 'phones running to Muscoda. It seems fair to assume that, since the number of 'phones on the respective lines so nearly corresponds, the switching at one end about offsets that at the other. In the absence of a traffic analysis at Highland and Blue River this assumption will be made. On this question of free exchange of service, this Commission has given an opinion. *In re Free and Reduced Rate Telephone Service*, 1908, 2 W. R. C. R. 521, 542.\* There it is explained that free exchange of toll service is prohibited "*for a part only* of the subscribers of a telephone company similarly situated, and not for all of the subscribers." In the arrangements under consideration all subscribers similarly situated are treated alike and the free exchange is permissible.

\*See I Commission Telephone Cases, 31.—Ed.

The contention has been made by some of the connecting lines that if these arrangements stand, the same privilege should apply to the Avoca-Muscoda line. This contention is not well taken because the subscribers of the two companies are not "similarly situated." Here the two lines are owned by the Avoca-Muscoda Telephone Company and there is no balancing of two lines separately owned against one another. The Avoca line should pay a switching fee to the Muscoda Company. The Muscoda Company has no 'phones that ring the Avoca exchange directly but the 21 'phones of the Avoca lines can ring the Muscoda exchange directly. It is therefore evident, that there is not an equal exchange of service.

The Byrd's Creek lines have been paying on the basis of 25 'phones and at half the full \$4.00 switching fee. Testimony for the applicant showed that this was done because these lines connected with an exchange at Blue River and would have to contribute to that exchange also. This irregularity should be eliminated, because the applicant is entitled to a contribution from all connecting lines for the service which it gives them. Fees to be paid to other exchanges and rentals to be collected by other companies are matters to be adjusted at the other end. The Byrd's Creek Lines should pay a full switching fee on its 32 'phones.

Probably the most complex of the different switching agreements is the one involving the "Pier Lines" owned by Mrs. James. On the four lines generally known as the "Pier Lines" there are 44 'phones that switch through the Muscoda exchange. The present arrangement considers the switching performed by the Muscoda exchange as offsetting the privilege of a Richland Center outlet. This assumption is a pretty broad one and does not seem warranted. The "Pier Lines" should pay a regular switching fee and the applicant should pay a proper amount for the use of the two Richland Center through lines. A computation of what this payment should be is made elsewhere in this decision.

There is only one exchange to which the applicant pays a switching fee and that is the Lone Rock Company's exchange at Gotham. The applicant has a line with 12 'phones running to Gotham. Through a geographical division, 5 'phones are

considered as tributary to the Gotham exchange and on these 5 'phones the applicant pays a switching fee of \$3.00 each per year. The exact extent to which these 12 'phones make use of the Gotham exchange is not known but since neither company has raised objection to the arrangement, the agreement will not be disturbed at this time.

As regards the other connecting lines, the Basswood and Eagle, the Munz, and the Pulaski lines, it appears that 'phones on these lines can all ring Muscoda directly and the only question here is what the uniform switching fee shall be.

#### THE RICHLAND CENTER THROUGH LINES.

These two lines are used as through lines only. From Muscoda to a point midway between Muscoda and Richland Center the lines are owned by Dr. James. From there on they are owned by the Farmers' Exchange of Richland Center. A fair basis on which the applicant should pay a return to the owner for use of the through lines would be a rental dependent upon the investment of the owner.

An estimate of the value of Dr. James' interest in the Richland Center lines has been made by the engineers and this valuation shows a cost new of \$432.00 and a present value of \$290.00. The rental to be paid the owner should be sufficient to allow for interest, depreciation and taxes on the cost new. An allowance of 15% or \$65.00 appears ample. This, then, will be an item to be added to the wire plant expenses of the applicant and makes the total operating expenses \$2,637.00. No allowance is made here for the ordinary repairing of the Richland Center Lines as these repairs will be relatively small and can undoubtedly be handled by the present lineman without any appreciable increased cost. This arrangement means that the Muscoda Mutual Telephone Company will make the ordinary repairs on Dr. James' half of the lines, while he must stand in readiness to put in new poles when necessary and to replace the lines when unserviceable.

#### APPORTIONMENT OF EXPENSES.

We are now ready to apportion expenses to the foreign or connecting lines. Central office expenses were found to be

\$845.00. To apportion these on the basis of the percentages obtained from the traffic analysis, 46% should be chargeable to foreign lines. This gives \$388.70 central office expense chargeable to foreign lines. The rental of \$65.00 a year for Dr. James' property would be apportioned according to the use made of the Richland Center lines or about 65% to foreign, making an item of \$45.00. Ordinary wire plant expenses amounted to \$520.00 and a small part of this should be met by foreign lines. According to the engineers' valuation, the distribution system, both cost new and present value, divides about 80% to rural and 20% to village. The wire plant expenses will be proportionate to the property used in each service. On this basis, 80% of \$520.00, or \$416.00, is a rural expense. Out of the total rural distribution system cost new, \$502.00 is property owned by applicant but used by foreign lines. This is 6.5% of the total and gives a wire plant expense of \$27.00 chargeable to foreign lines. Apportionment of interest, depreciation and taxes has been based upon the cost new of the property in the following manner:

#### APPORTIONMENT OF INTEREST, DEPRECIATION AND TAXES.

	RURAL							
	LESS	PER		PER		PER		PER
	FOREIGN	CENT.	CITY	CENT.	FOREIGN	CENT.	TOTAL	CENT.
Cost New	\$8,333.00	71	\$2,848.00	24	\$631.00	5	\$11,812.00	100.
Depreciation	546.70		184.80		38.50		770.00	
Taxes	53.25		18.00		3.75		75.00	
Interest								
(7% on P. V.)	426.00		144.00		30.00		600.00	
	<u>\$1,025.95</u>		<u>\$346.80</u>		<u>\$72.25</u>		<u>\$1,445.00</u>	

#### SUMMARY OF EXPENSES APPORTIONED TO FOREIGN.

Central Office .....	\$388.70
Rent of R. C. Lines.....	45.00
Wire Plant .....	27.00
Depreciation .....	38.50
Taxes .....	3.75
Interest .....	30.00
	<u>\$532.95</u>

According to the engineer's inspection there are 241 foreign 'phones directly connected to applicant's switchboard. These 241 'phones should bear the expense of switching. Dividing the \$532.95 by the 241 gives a switching fee of \$2.20. No allowance has been included in here for general and commercial expenses. Allowing for these would bring the charge per 'phone up to about \$2.50. Since the applicant's books have not been kept according to the Commission's classification and it has been necessary to construct an income account, the switching expenses can not be determined with absolute certainty. It is apparent, however, from the analyses made that a \$4.00 charge per 'phone is excessive and that the \$3.00 rate now charged is ample.

Allowing a uniform switching fee of \$3.00 and considering 205 foreign 'phones as actually paying gives the applicant a revenue from this source amounting to \$615.00. When the \$15.00 paid to the Gotham exchange is deducted there remains a net revenue from switching of \$600.00.

Assuming a switching charge of \$3.00 and assuming other changes as indicated, the following revenues result:

#### ESTIMATED EARNINGS.

Rental from 84 village 'phones .....	\$1,008.00
Rental from 103 rural 'phones .....	1,236.00
Increase of \$3.00 each on business 'phones .....	90.00
Wisconsin tolls .....	75.00
Company's own toll .....	63.00
Misc. increases on extension sets, etc.....	10.00
Revenue from switching .....	600.00
	<hr/>
	\$3,082.00

The total expenses exclusive of interest we found were \$2,637.00 and comparing these with earnings, there is a balance of \$445.00 available for dividends. This amount is 5% on the present value of the property and 12% on the par value of stock. Since we are informed by the Secretary of the Company that the stockholders look for good service rather than dividends, this return is probably sufficient. Should a full 7% return be desired by stockholders, it will be necessary to readjust the entire schedules. Such procedure does not seem warranted at this time.

It should be noted here that the applicant's present practice of rebating to stockholders is unlawful under the terms of Sec. 1797m-92. All subscribers whether stockholders or not must be charged the regular telephone rental as per Company's schedule. If there are any profits, a portion of such rental would be returned in the form of dividends.

#### APPLICATION FOR OTHER ADJUSTMENTS.

1. Business telephones ordinarily pay a higher rate than residence telephones. A study of rates on file with this Commission indicates that a difference of \$3.00 between the two is entirely reasonable.

2. The applicant seeks also to make an extra charge of 25 cents per month for 'phones in for less than one year. There are a number of cheese factories which have occasion to use 'phones during that part of the year when the factories are running. When the factory closes, they want the 'phone taken out to be put in again next year. It is only fair to allow an extra charge for such interrupted service. A ruling on this point has been made In re Free and Reduced Rate Telephone Service, 2 W. R. C. R. 521, 545.\* "Telephones installed or used for short periods of time, such as telephones in summer cottages, temporary business places, etc., may justly be charged a higher rate than the proportional part of the regular annual rate for the respective classes of service."

3. A rate is asked for extension telephones and extension bells. It is customary to allow an extra charge for such extensions. The extension 'phone meant in this instance is a talking 'phone without a bell. An additional charge of 50 cents a month will be allowed. For extension bells an additional charge of 15 cents a month is sufficient. Those additional charges will have very little effect on the applicant's revenues.

4. An application is made to charge \$18.00 a year for business telephones when put on a metallic circuit. The applicant intends to put a metallic system in throughout the village. It does not seem advisable to make provision for this charge until it has actually been completed.

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\*See I Commission Telephone Cases, 31.—Ed.



5. The request for a differentiation in the switching fee, charging a half fee in some instances, is not approved. It appears more equitable to make a uniform charge of \$3.00 per 'phone per year on all connecting lines.

#### TOLL CHARGES.

The applicant's practice is to make no toll charges excepting against outsiders who come to the central office booth. Such persons are charged 10 cents a message. Where it is necessary to send a messenger out, 10 cents is charged against the person called. These charges may be retained.

#### SUB-STATION EQUIPMENT.

From information supplied by applicant's Secretary, it seems that there are about seven renters (non-stockholders) who own their telephones. Practically all, if not all, instruments used by stockholders are owned by the individuals. In the latter case, the 'phones were offered as part payment of a share of stock and the transaction is proper, but in the former, there is no reason why the equipment should be furnished by the subscribers. In all instances where non-stockholders own their instruments, an annual rental should be paid, equivalent to interest on the investment. An annual rental of 50 cents a year will about cover this. Since all 'phones are maintained and replaced by the applicant, no rental to cover depreciation need be paid the renters who own telephones.

The suggestion made in the brief for the connecting lines that one of the Pier lines be used as a through line is not practicable as all four of these lines connect with Muscoda only. As regards the Wisconsin Telephone Company's proportion of expenses, this matter is not at issue in this case.

*Therefore, it is ordered,* 1. That the application of the Muscoda Mutual Telephone Company, in so far as it seeks to fix a \$4.00 annual switching fee per 'phone, be dismissed.

2. That the application for a special charge for business 'phones on a metallic system be dismissed until a metallic system shall have been installed. When such installation

of a metallic system has been completed, the Commission will hear further application for adjustment in rates.

3. That those portions of the application seeking to establish a \$15.00 rate for business telephones, an extra charge of 25 cents per month for telephones in less than a year, and an extra charge for extension telephones and extension bells be granted.

4. That the applicant pay to the owner of the Muscoda end of the Richland Center through lines an annual rental of \$65.00.

5. That the applicant pay to non-stockholders owning their own telephones an annual rental of 50 cents per 'phone.

6. That the applicant's present schedule of rates be abandoned and the following substituted therefor:

Residence telephones—village .....	\$12.00 per year
Residence telephones—rural .....	12.00 per year
Business telephones—village .....	15.00 per year
Extension talking 'phone—additional.....	.50 per month
Extension bell—additional .....	.15 per month
Additional charge where 'phone is in less than a year.....	.25 per month
Switching charge per 'phone assessed against all connecting lines that ring the applicant's exchange directly.....	3.00 per year
Toll charge for users who are not regular customers of applicant or of its directly connecting lines (to any part of applicant's system or lines it exchanges with)	.10 per message
Messenger fee .....	.10 per call

7. That free telephone service now given to the local post office and the railway station be discontinued.

Dated at Madison, Wisconsin, this 30th day of April, 1913.

IN THE MATTER OF THE APPLICATION OF THE VIKING TELEPHONE COMPANY FOR AUTHORITY TO INCREASE RATES.

*Decided May 1, 1913.*

**Increase in Rates—Inadequate Revenue.**

Upon application by The Viking Telephone Company to increase its annual rate from \$3.50 per telephone to \$4.00 in order to properly maintain its system, it appeared that the applicant was a rural company with no exchange, and paid the Wisconsin Telephone Company \$3.00 per year for each telephone for exchange service.

*Held:* That, inasmuch as there is no opposition to the proposed increase and as it will not enable the applicant to earn much, if any, return upon its property above the actual cost of keeping it in condition for service, the application should be granted.\*

**DECISION AND ORDER.**

Application in this matter was dated February 14, 1913. The applicant is a telephone utility engaged in the management and operation of a telephone system in the town of Clay Banks. The petition shows that the rates for telephone service now in effect are \$3.50 per year per 'phone, of which \$3.00 per 'phone is paid to the Wisconsin Telephone Company for exchange service, leaving a balance in the treasury of the applicant of \$.50 per 'phone per year.

Hearing in this matter was held on April 15, 1913, at Madison, Wis., *Mr. L. L. Johnson* appeared for the applicant. There were no appearances in opposition.

At the hearing it was stated that there was no opposition among the subscribers to the proposed increase and that the increase was considered necessary in order for the company to be in a position to properly maintain its system. It appears from the report of the utility for the year ending June 30, 1912, that there were on that date a total of 61 subscribers, all on rural lines. The total receipts of the utility as shown by the report amounted to \$88.23. The portion of the telephone rentals which was paid to the Wisconsin Tele-

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\*Editor's headnote.

phone Co. for exchange service was apparently not included in the statement of earnings. Just what elements enter into the \$88.23, aside from the \$.50 per year obtained from the regular rates for rural service, does not appear, but these are probably miscellaneous earnings arising from classes of service not covered by the regular \$3.50 per year charge.

It appears to be the practice of the company to require subscribers to furnish a certain amount of labor each year in addition to the rate charged for service. It also appears to have been the practice in some cases to accept a payment in lieu of labor. No extended analysis of the finances of the applicant appears to be necessary. The cost of the property according to the report for the year ending June 30, 1912, was \$2,440.00 and at the hearing the representative of the applicant estimated the value of the property to be about \$3,000.00. It seems to be evident that the proposed increase will not be in any way unreasonable. In fact, it is almost certain that this increase, even if the company continues the practice of requiring each subscriber to furnish a certain amount of labor, will not enable the company to earn much, if any, return upon the property above the actual costs of keeping it in a condition to furnish service. In view of this condition and of the fact that there appears to be no opposition to the increase, it seems entirely reasonable to authorize the increase as asked for in this application.

*It is therefore ordered,* That the applicant in this case, The Viking Telephone Company, may discontinue its present rate of \$3.50 per 'phone per year and substitute therefor a rate of \$4.00 per 'phone per year.

Dated at Madison, Wis., this 1st day of May, 1913.

**FRANK WINTER vs. LA CROSSE TELEPHONE COMPANY AND  
WISCONSIN TELEPHONE COMPANY.**

*Decided May 14, 1913.*

**Compulsory Physical Connection.**

This was a petition by a resident of La Crosse asking that the Wisconsin Telephone Company and the La Crosse Telephone Company be required to establish physical connection between the toll systems of each company and the exchange system of the other, although not between their local exchanges. The Wisconsin Telephone Company resisted the granting of the petition.

The La Crosse Telephone Company was established in opposition to the Wisconsin Company and was controlled by local capital. Many of the Wisconsin Company's subscribers had changed to the local system. No physical connection existed between the two systems but the chief operator of each of the competing exchanges had one of the other company's telephones installed upon his desk. Physical connection for toll service between the two companies appeared to be mechanically feasible and it appeared that such connection would greatly facilitate long distance communication, decrease the cost of handling, and not materially impair service efficiency as a result of the differing apparatus in use by the two companies.

**Mechanical Feasibility.**

*Held:* That clear connection can be insured by an order requiring efficient batteries.

**Constitutionality of Statute.**

*Held:* As to the constitutionality of the statute, that, although it enforces upon utilities an involuntary enlargement of the use of their facilities when necessary and required for the public welfare, there is nothing in the letter or in the spirit of the law that savors of confiscation, mere inconvenience in its application not being a ground for declaring it invalid.

**Requirements of Statute—Prerequisites of Compulsory Connection.**

*Held:* That, under the statute, involuntary physical connection may be ordered only when it appears: (1) that the connection is required by public convenience and necessity; (2) that it will not result in irreparable injury to the owner or other users of the facilities of public utilities; (3) that no substantial detriment to the service will result therefrom.

**Public Convenience and Necessity.**

*Held:* That public convenience and necessity require the establishment of connection between the respondents' systems so that the subscribers of each may use both toll systems directly from their residences or places of business.

**Deprivation of Property.**

*Held:* That the application of the statute must not result in depriving any private property employed in a public service of its earning capacity.

**Maintenance of Status Quo—Extra Charge for Service.**

*Held:* That for the last-mentioned reason, a subscriber of one company desiring toll service over the lines of the other company, must pay in addition to the rate charged the patrons of the latter company, a reasonable compensation for the additional service; and that this discrimination between the subscribers of the two exchanges is just and necessary in order to preserve the interests of the respective utilities after the connection has been made;

That consequently, the existing relations of the companies with respect to local business will not be disturbed and no irreparable injury to the owners or other users of the facilities will result from the connection;

That the connection will not result in any substantial detriment to the service to be rendered by the companies.

**Cost of Connection.**

*Held:* That the cost of establishing and maintaining connection should be apportioned equally between the companies.\*

**DECISION AND ORDER.**

The petitioner is a resident of the city of La Crosse and alleges that in the city of La Crosse two telephone systems are in operation, one known as the Bell system, belonging to the Wisconsin Telephone Company, and the other operated by the La Crosse Telephone Company, which company is owned and controlled by local capital; that he is a user of three telephones of the La Crosse Telephone Company, but is not a subscriber of the Wisconsin Telephone Company; that as such subscriber of the La Crosse Company he finds it to his interest to use almost daily the toll lines of the Wisconsin Telephone Company; that the Wisconsin Telephone Company's toll lines extend into many towns and villages and to telephone systems not reached by the La Crosse Telephone Company; and between which no direct communication may be had; that public convenience and necessity require a physical connection between the toll lines of each of the said companies and the exchange system of the other; that such connection would greatly extend the use of telephones of each, and be of great advantage to subscribers of both systems. Therefore petitioner in behalf of himself and other citizens of La Crosse asks that an investigation be made of the matter, and an order be made directing physical connection of each of said systems with toll lines of the other, determining and prescribing the con-

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\*Editor's headnote.

ditions and compensation for such joint use, and by whom the expense of making and maintaining such connection shall be borne.

The respondent, Wisconsin Telephone Company, answering the petition, admits all the formal allegations thereof, but denies that public convenience or necessity requires a physical connection of the toll lines and the telephone system of the Wisconsin Telephone Company, with the toll lines and telephone system of the La Crosse Telephone Company or that the Railroad Commission of Wisconsin has jurisdiction, right or authority to take any proceedings upon said petition or make any order with relation to any of the matters referred to or any of the allegations contained therein, but alleges that any order made, directing such physical connection to be made will deny the Wisconsin Telephone Company the equal protection of law and of trial by jury, and will be the taking of its property without due process of law and without due compensation; and that such connection will result in substantial detriment to service furnished by both or either of said companies; wherefore the respondent, the Wisconsin Telephone Company, prays that the petition be dismissed.

The hearing was held January 3rd, 1912, at the Capitol, in the city of Madison. *Mr. Frank Winter* appeared in his own behalf, *L. G. Richardson* and *Hunt Chipley*, attorneys, and *Edwin S. Mack*, of counsel; appeared for the Wisconsin Telephone Company.

It appears that there are two telephone companies operating in the city of La Crosse; the Wisconsin Telephone Company, commonly called the Bell Company, and the La Crosse Telephone Company, the latter being owned and controlled by local capital. The local system was installed because the subscribers of the Bell system believed they were charged exorbitant rates and the farmers in the vicinity of La Crosse owning their own lines were not able to secure connection with the Bell lines, and also because of the demand by the Bell Company for increased toll when connections outside of La Crosse were given.

The La Crosse Company had the advantage over the Bell system, as local people did not dare to patronize a foreign concern which was in competition with an enterprise controlled by local capital, and although rates of the Bell system were lower than those of the local system, subscribers of the former system changed to the local system after the latter was installed. In consequence the local system rapidly increased the number of its subscribers with a corresponding decrease in the number of subscribers of the Bell system. The better class of subscribers, as a rule, took the 'phones of the local system, and these are the greater users of the toll lines. The effect of the competition may be fully appreciated when we consider that originally the Bell system had 2,500 subscribers, which at the time of the hearing was reduced to 1,650, while the subscribers of the local system numbered 4,000. The toll calls amounted in one month to \$5,000 for the Bell system, and to about \$4,500 for the local system.

All toll lines extending out of La Crosse and owned or leased by the competing companies, are the Kneen System, Teardale System and the Gaveney System. The toll lines entirely within the state owned by the Wisconsin Telephone Company and extending out of La Crosse, are La Crosse-Eau Claire, La Crosse-Black River Falls, La Crosse-Sparta, La Crosse-Tomah, La Crosse-Mauston, La Crosse-Madison, La Crosse-Milwaukee, and La Crosse-Coon Valley. Connection is also made by the Wisconsin Telephone Company with the American Telephone & Telegraph Company's lines, the La Crosse-Minneapolis and the La Crosse-Tomah lines, and with other lines running into Minnesota known as the La Crosse-Minneapolis, La Crosse-Winona, and La Crosse-Houston lines, which belong to the Northwestern Telephone Company. The La Crosse Telephone Company is connected with local farmers' lines running to Viroqua, Coon Valley, Westby, Sparta, Tomah, and Galesville. It also connects with the La Crosse Interurban Telephone Company on the southwest, and has one circuit to Sparta, one to Viroqua, and another to Prairie du Chien. It connects with the Tri-State Company on the west, and with the Standard Company on the southwest.



The chief operator of each of the competing exchanges has installed upon his desk a telephone of the other exchange, which is the only connection between the two exchanges, but neither of these telephones is connected with the switch-board of the subscribing company.

Relative to the physical possibility of making connection between the competing systems for toll service, it appears that the new building of the La Crosse Telephone Company is located about four blocks from the office of the Bell system. A connection could be made at any one of three junction points. The central could be located at Main Street, in which street the conduits of both companies are laid parallel to each other. In the conduit of the La Crosse Company there is sufficient room to accommodate a 25 pair cable, which is deemed sufficient to handle the business. The increase of business would not require any additional poles or arms, but some additional office equipment would be needed.

When two systems are connected, quicker connections are obtained through the single exchange than through the double exchange, because the first connection is made by the receiving operator, while in the second case it is trunked across to another operator. In cities where two exchanges are operated and connected by trunking from one exchange to the toll board of the other, the second exchange is supervised by the operator taking the call so that it is handled precisely as if it were a connection through one exchange. It was shown that where a connection is desired by an independent operator for a toll on the Bell lines, where there is physical connection, the trunking throughout can be supervised by the operator of the independent company; but where there is no such connection, as in the instant case, and a toll message is received over Bell lines for a subscriber of the independent system, who has not also a Bell 'phone, the line is disconnected until the party can be reached by messenger or otherwise, when a connection must again be made with the toll lines. Calls thus delayed are always a greater expense to the company than calls immediately responded to, and for this reason the expense of toll calls, when a physical connection is established, is not as great as in cases where no physical connection exists.

It was also maintained that the efficiency of service might be impaired by the connection because of the use of different apparatus by the two companies. Although the Bell company uses the Western Electric receiver and transmitter, while the La Crosse Telephone Company uses the Vote-Berger apparatus, it was shown that connections are now being made in different cities between the Bell Company and other telephone companies using different receiving and transmitting apparatus without any difficulty, and with apparently satisfactory results. However, some of the employees of the Bell Company were of the opinion that the transmission from such a connection was not as clear as that coming from stations using the same apparatus; but the consensus of opinion of telephone engineers is that no material deterioration will result in the service because of such connection.

The greatest trouble in establishing clear connections over two lines, it was found, usually occurred in cases where messages were transmitted over the American Telephone & Telegraph lines, due partly, it is believed, to the use of different transmitting apparatus, but principally to the fact that the batteries at the sub-stations of the connecting lines are not kept up to standard. This difficulty can, however, readily be corrected by order of the commission requiring the batteries to be maintained in efficient operating condition.

In support of the contention that a physical connection would result in ruining the exchange business and decreasing the number of its subscribers, with a corresponding increase in the list of subscribers of the La Crosse Telephone Company, it was pointed out in behalf of the Wisconsin Telephone Company that those using both 'phones now would only need one 'phone when such connections were formed, and the local company naturally would be favored. As it is now, 450 establishments maintain both 'phones, and although the long distance calls over the Bell system would be increased, the cost of operation would be correspondingly increased, and the increase would not compensate for the loss of the local subscribers. To meet the objection it was suggested that a rule be adopted discontinuing the toll service in cases where one now using the Bell system discontinued the use

that such a rule would not affect those not making heavy use of the tolls, as they would find it more advantageous to maintain only one 'phone. While this objection is vital, it is not insurmountable, as we shall see later.

It will also be noticed that the La Crosse system maintains more than twice as many 'phones as the Bell system maintains. This, it is claimed, would result in great benefit to the Bell system, because by merely connecting the trunk lines of the two systems all the subscribers of the local company would have toll access to the Bell line. The better class of patrons, those using the toll lines to a greater extent have the La Crosse instruments in their homes, and as 25 per cent. of the toll business is done in the evening after people have reached their homes, it is said that a large amount of toll business would originate on the La Crosse system at a time when the Bell toll lines are least employed.

It must be conceded that the public of La Crosse would be greatly benefited by a physical connection between the switchboard of the La Crosse Company and the toll lines of the Bell system. It would result in a great saving of time to subscribers having only the La Crosse Company's 'phones, which are the greater number. Only 8 per cent. of the total telephone subscribers in La Crosse have both 'phones. Twelve or fifteen large business houses have an interior system connected with the trunks of both systems.

The cost of outgoing messages varies with circumstances, depending upon salaries of the operators and local conditions. The cost of one call is determined by taking the total receipts of in and out toll business, together with the expense of giving the service, and the number of calls received and sent. By this method of reckoning, the cost of an outward message from La Crosse to Sparta is found to be about 4 cents. The expense of an outward call is somewhat greater than an inward call.

Four toll operators are employed at present by the Bell company at La Crosse, but with additional connections resulting through a physical connection, additional operators would be required. At the present time only one is retained after 10:00 P. M.

The foregoing resume of the testimony, which is quite voluminous, contains all the salient facts brought out upon the hearing, and necessary to a decision of the controversy between the parties. In the light of such facts we must determine whether involuntary action in the matter at issue may be required of the respondent telephone companies.

The statute provides that (Sec. 1797m-4):  
“..... every utility for the conveyance of telephone messages shall permit a physical connection or connections to be made, and telephone service to be furnished, between any telephone system operated by it, and the telephone toll line operated by another such public utility, or between its toll line and the telephone system of another such public utility, or between its toll line and the toll line of another such public utility, or between its telephone system and the telephone system of another such public utility, whenever public convenience and necessity require such physical connection or connections, and such physical connection or connections will not result in irreparable injury to the owners or other users of the facilities of such public utilities, nor in any substantial detriment to the service to be rendered by such public utilities. The term ‘physical connection,’ as used in this section, shall mean such number of trunk lines or complete wire circuits and connections as may be required to furnish reasonably adequate telephone service between such public utilities.

In case of failure to agree upon such use or the conditions or compensation for such use, or in case of failure to agree upon such physical connection or connections, or the terms and conditions upon which the same shall be made, any public utility or any person, association or corporation interested may apply to the commission, and if after investigation the commission shall ascertain that public convenience and necessity require such use or such physical connection or connections, and that \* \* \* such use or such physical connection or connections would not result in irreparable injury to the owner or other users of such equipment or

substantial detriment to the service to be rendered by such owner or such public utilities or other users of such equipment or facilities, it shall by order direct that such use be permitted and prescribe reasonable conditions and compensation for such joint use, and that such physical connection or connections be made, and determine how and within what time such connection or connections shall be made, and by whom the expense of making and maintaining such connection or connections shall be paid.

Such use so ordered shall be permitted and such physical connection or connections so ordered shall be made, and such conditions and compensation so prescribed for such use and such terms and conditions, upon which such physical connection or connections shall be made, so determined, shall be the lawful conditions and compensation for such use, and the lawful terms and conditions upon which such physical connection or connections shall be made, to be observed, followed and paid, subject to recourse to the courts upon the complaint of any interested party, as provided in sections 1797m-64 to 1797m-73, inclusive, and such section so far as applicable shall apply to any section arising on such complaint so made. Any such order of the commission may be from time to time revised by the commission upon application of any interested party or upon its own motion."

It will be observed that before the duty of making a physical connection of telephone lines under the statute is imposed upon telephone utilities, and can be enforced in any case, it must appear:

- (1) that the connection is required by public convenience and necessity;
- (2) that it will not result in irreparable injury to the owner or other users of the facilities of such public utilities; and
- (3) that no substantial detriment to the service will result therefrom.

Unless these conditions exist simultaneously, the utilities are free to make or to refuse to make connection of their lines, as their action in the matter in such event lies entirely within their discretion. Notwithstanding the contention of respondents that the statute transgresses certain constitutional guaranties of property rights, it was manifestly framed with great care, and with a view of protecting the utilities in the enjoyment of all their legal rights and privileges, while at the same time compelling an involuntary enlargement of the use of their facilities when necessary and required for the public welfare. There is nothing in the letter or in the spirit of the law that savors of confiscation, and if administered according to its obvious intent and purpose, no property rights will be impaired and no injury inflicted upon any one. That great difficulty will be encountered, in certain instances, in prescribing such terms and conditions upon which the connection shall be made, as will safeguard the rights and interests of all concerned, is evident to every one conversant with the complexity of the situation presented by the numerous competing and conflicting telephone utilities now engaged in serving the public with their facilities and disturbing its tranquility with their strifes. But mere inconvenience in the application of the terms of a statute to the facts of some intricate case that may arise, is not a ground for invalidating the statute. Some constitutional limitation or restriction must be violated by the provisions of a statute before legislation can be set at naught. The act here under consideration is, in our judgment, free from the imputation of any such infirmity.

Passing to the merits of the case, we are first met with the issue whether public convenience and necessity require a physical connection of respondents' lines or systems for the purpose of toll service. The question of such connection for the purpose of rendering local service of a character that would give the subscribers of one exchange telephone connection with the subscribers of the other exchange within the city of La Crosse was eliminated from the case by stipulation of the parties.

the term public convenience and necessity is not terminate. It is usually found in statutes requiring some act to be performed or creating some new public obligation, not imposed by the common law, which interferes with private rights. As a justification for such interference there must be a public exigency demanding it, which is always a question of fact depending upon a variety of considerations.

In the case before us it appears that the city of La Crosse has a population of 30,000. Within the city are two competing local telephone exchanges. Each has toll connections with other lines and systems. The subscribers of one exchange often require the toll service of the other exchange. This can now be had only by a subscriber installing 'phones of both exchanges, or, when needing the toll service of the exchange to which he is not a subscriber, going to some public station of such exchange. The loss of time and inconvenience thus occasioned is often embarrassing as well as expensive.

As the Bell system is connected with lines and systems covering the entire country, the demand for the service of the Bell toll lines by the subscribers of the local company is naturally greater than the demand for the services of the toll lines of the local company by the subscribers of the Bell company. This is reflected in the toll revenues of the companies, respectively. While the number of subscribers of the Bell company is approximately 1,500, and that of the local company approximately 4,500, the annual toll revenues of the former amount to about \$6,000, and of the latter to about \$4,500. Without reviewing at length the evidence adduced upon the hearing upon this phase of the case, suffice it to say that in the light of all the facts and circumstances disclosed in the investigation, the conclusion in our judgment is inevitable that public convenience and necessity require that a physical connection of the respondents' systems or lines be so made that the subscribers of each exchange may through the telephones installed by them in their residences or places of business, communicate with persons over the toll lines of both exchanges.

In this connection it may be well to consider the apprehension of the Bell Company that its local exchange would be deprived of its patronage if its toll line facilities were made available to the patrons of the competing exchange. It is evident that the only inducement to subscribe to the Bell system is the fact that thereby the subscriber is connected with a great telephone system covering like net work the entire country. The contention of petitioner that no consideration should be given to this fact, but that the toll line should be treated separately and not as an adjunct of the local exchange, does not seem tenable when we estimate the consequences to property rights that are likely to flow from such course. For the purpose of accounting and ascertaining equitable rates to be charged the public for services, it is essential to make such separation and to treat each exchange and class of service as a separate entity, although a common ownership of the property devoted to the different classes of service exists. But separating the property for the purpose of devoting one part to a use which will result in injury or damage to the user of the other part is entirely another matter, and cannot be done without compensating the owner for the damage thus sustained. No subterfuge can be indulged under the statute which will have the effect of depriving any private property employed in a public service, of its earning capacity.

In the peculiar situation found in the instant case, it is possible to prescribe terms and conditions which will preserve the interests of the utilities respectively after the connection has been made. The subscriber of one company desiring toll service over the lines of the other company must pay in addition to the rate charged the patrons of the latter company a reasonable compensation for the additional service. Neither company will be permitted to absorb such additional charge, but the same must be paid by the patrons of either company using the toll lines of the connecting company. This will not result in any discrimination between subscribers of the same exchange, but will result in a just and necessary discrimination between the subscribers of the two exchanges. A subscriber, who has not installed the tele-



phones of both exchanges, is not entitled to the toll service of both exchanges without paying an additional charge to the exchange with which he is not connected when desiring to use its toll line facilities.

There is no evidence showing that any irreparable injury will or can result to the owner or other user of the facilities of the respondent companies. Under the terms and conditions outlined above the business of neither company will be disturbed, and their relations to each other with respect to existing local business will be the same as at present. Certainly neither can suffer any injury under the circumstances. It is practically conceded that no material detriment will result to the service of either company should the connection sought in this case be made.

For the reasons assigned it is the judgment and finding of the commission:

(1) That public convenience and necessity require a physical connection of respondents' telephone lines or systems in the city of La Crosse for the purpose of enabling the subscribers of each exchange to avail themselves of the toll line facilities of the other exchange from the telephone stations installed in their residences or places of business;

(2) That such connection will not result in irreparable injury to the owner or other users of the facilities of such public utilities; and

(3) That such connection will not result in any substantial detriment to the service to be rendered by such public utilities.

The cost of making the connections and thereafter maintaining them will be small and under the circumstances will be apportioned equally between the companies.

*Now, therefore, it is ordered,* That the La Crosse Telephone Company and the Wisconsin Telephone Company make such a physical connection or connections between their toll lines or systems as is required for the furnishing of toll line service to the subscribers of each company, at the stations installed in their residences and places of business, over the toll lines of the other company.

*It is further ordered*, That the expense of making such physical connection or connections and the subsequent maintenance thereof be and the same is apportioned equally between said companies.

Thirty days is deemed a reasonable time within which the companies shall comply with the terms of this order.

Dated this fourteenth day of May, A. D., 1913.

PART II.

COMMISSION ORDERS, RULINGS AND DECISIONS  
OF INTEREST TO TELEPHONE AND TELE-  
GRAPH COMPANIES.

CALIFORNIA.

Railroad Commission.

CITY OF PALO ALTO *vs.* PALO ALTO GAS COMPANY.

CASE No. 288—DECISION No. 499.

*Decided March 12, 1913.*

**Reduction of Rates—Valuation of Property—Effect of Contract Fixing  
Rates—Rate of Return—Going Concern Value.**

The rate of \$1.50 per thousand cubic feet for manufactured gas complained against as unjust and unreasonable by the municipal authorities. Upon stipulation by parties all the rates for the entire territory served by respondent, within and without the city, considered at issue. The gas distributed is purchased by respondent from Pacific Gas and Electric Company at a price equal to 50 per cent. of the gross income from its sale, under a contract made in 1905 for a term of ten years. The point of manufacture is approximately twenty-three miles from Palo Alto, other communities along the line being served from the same transmission system. Upon the hearing held and investigations made, it was found that the fair value to be assigned for the purpose of this case to respondent's property used and useful in the public service is not in excess of \$69,250, due consideration being given to the element of going concern value; that a rate of return of 8 per cent. on said value is at least a fair and equitable rate; that the cost of manufacture and transmission of said gas is not to exceed 53.454 cents per thousand cubic feet; that the cost of distribution, plus the above rate of return, is not in excess of 65.83 cents per thousand cubic feet; that the total cost of manufacture, transmission and distribution, including the above rate of return on the investment does not exceed, at a liberal figure, \$1.19284 per thousand cubic feet. Accordingly,

*Held:* (1) That the existing rate of \$1.50 per thousand cubic feet in effect in the city of Palo Alto, and in the territory adjacent thereto, is an unjust and unreasonable rate.

(2) That the just and reasonable rate is not to exceed the sum of \$1.20 per thousand cubic feet with a minimum charge of 50 cents per month per meter.

(3) The contract entered into by respondent for the purchase of the gas distributed by it cannot stand as against the power of the Commission under the Constitution and the Public Utilities Act to fix just and reason-

able rates. Otherwise, a utility, by entering into contracts with third parties for the supply of its commodity or otherwise, could effectually nullify the power of the State, under the police power, to supervise and regulate its public utilities. It is assumed that, as a result of this decision, the parties to the contract will make the necessary modifications therein.

(4) That with respect to the amount of return to be allowed the gas company on its plant, no fixed percentage applicable to all cases and classes of utilities can be established. Each case must be judged on its own merits. It may well be that a utility in one community would be entitled to one rate of return while a similar concern in another community would be entitled to a different rate. It may be that a large and solidly established utility will not be entitled to as high a return as a smaller utility which is struggling against adverse circumstances. The most that can be said by way of general principles is that the return should be at least the average return which is earned by other classes of business of the same degree of hazard in the same community. The Commission in fixing a rate of return must be liberal, lest too strict a policy result in turning capital to other fields of enterprise. California needs development by public utilities, and this Commission's policy should be a broad and liberal one, so as to encourage capital to develop the State by legitimate public utility enterprises where needed. The Commission should be careful not to permit an inflation of prices in ascertaining the value of the property of a public utility used and useful for the public purpose, but should be liberal in establishing the rate of return on that value.

(5) That the rate herein established is based on the facts applicable to this case, and that this rate cannot be taken as expressing the Commission's view as to what may be the fair and reasonable rate for artificial gas to be charged and collected in any other community when the facts may be different.

(6) That a proper allowance should be made for going concern value, but that careful examination should be made into the facts which are alleged to enter into that value.

(7) That in fixing a basis for a reasonable return, all the elements of the case, including the amount of money invested, the cost of reproducing the property new, the value of the property in its depreciated condition, the amount of stocks and bonds outstanding, and others, should be considered and given such weight as the facts may in each case justify.

#### APPEARANCES:

*Norman E. Malcolm*, city attorney, for complainant.

*Chickering & Gregory*, for defendant.

#### REPORT.

#### THELEN, Commissioner:

This is a complaint by the city of Palo Alto, a municipal corporation, against the Palo Alto Gas Company, a corporation, complaining that the present rate for gas supplied to the inhabitants of Palo Alto is unjust and unreasonable,

and requesting this Commission to establish a just and reasonable rate. The present rate is \$1.50 per thousand cubic feet with a minimum charge of 50 cents per month. There is no deduction for prompt payment.

On May 22, 1912, the city of Palo Alto, at an election called for that purpose in accordance with the provisions of chapter 40 of the laws of the special session of the legislature of 1911, transferred to the Railroad Commission all the city's powers over public utilities, including gas corporations. Thereafter on July 23, 1912, the city of Palo Alto filed with this Commission the complaint in the present proceeding. On August 22, 1912, the defendant company filed with Commission an offer to satisfy the complaint by establishing a sliding scale for gas running from \$1.50 to \$1.25 per thousand cubic feet with a minimum monthly charge of 50 cents, or a flat rate to all consumers of \$1.40 per thousand cubic feet with a minimum monthly charge of 50 cents. The city of Palo Alto thereafter, on August 26, 1912, passed a resolution refusing to accept the defendant's offer of satisfaction. Thereafter, on or about September 5, 1912, the Palo Alto Gas Company filed with the Superior Court of this State in and for the County of Santa Clara, a complaint against the members of this Commission, in which complaint the petitioner asked that a writ of prohibition issue to this Commission commanding the Commission and its members to desist and refrain from further proceedings on the complaint filed by the city of Palo Alto, and to show cause why such writ should not become absolute. The Superior Court thereupon issued a temporary restraining order directed against this Commission. The Commission filed a general demurrer, whereupon the matter came on for hearing on the argument on the demurrer. On December 13, 1912, the Superior Court rendered its decision sustaining the demurrer, without leave to amend, and denying the petition for a writ of prohibition. Thereafter on December 21, 1912, the defendant filed its answer denying the material allegations of the complaint. The Commission thereupon set the case for hearing for January 22, 1913. The hearing was held on said day and on other days subse-

grant thereto, and the case was thereupon submitted and is now ready for decision.

The franchise under which gas is now being distributed in the city of Palo Alto was granted by the board of trustees of the town of Palo Alto to D. O. Druffel by Ordinance No. 105, on September 17, 1904. The franchise is for a period of fifty years, and grants to Druffel, his heirs and assigns, the right to construct, equip, operate and maintain a gas plant in the town of Palo Alto, and to lay pipes for the purpose of carrying gas for light, heat and power in and along the public streets and thoroughfares of the town of Palo Alto, and to manufacture, distribute and sell gas to the inhabitants of the town. The town retains the right at any time after the expiration of ten years from the granting of the franchise to purchase the gas manufacturing plant and distributing system at a price to be ascertained by arbitration, as provided in the ordinance.

Druffel thereafter organized the Palo Alto Gas Company, the defendant in this case (hereinafter referred to as the Gas Company), for the purpose of exercising the rights granted to him by the franchise. Thereafter, on the thirty-first day of January, 1905, the Gas Company entered into a contract with L. P. Lowe for the installation of a gas distributing system and the building up of the business of such a system. It was provided that Lowe should construct such system and thereafter operate the same up to July 1, 1907, on which date he was to sell and deliver to the Gas Company said system, together with all materials on hand. Lowe agreed that he would secure at least 600 consumers by July 1, 1907. Lowe was to receive payment according to a sliding scale, depending upon the number of meters in actual use on July 1, 1907, as follows:

- \$80.00 per meter up to and including 649 meters;
- \$90 per meter from 650 to 749 meters inclusive;
- \$100.00 per meter from 750 to 999 meters inclusive; and
- \$110.00 per meter for 1,000 meters and over.

The contract further provided that Lowe should secure an assignment to the Gas Company of Druffel's franchise, and also in the name of the Gas Company a contract with

the United Gas and Electric Company for supplying gas for distribution in the town of Palo Alto in the Gas Company's distributing system. Under this contract, Lowe built the distributing system and operated the same until July 1, 1907, on which date the system was conveyed to the Gas Company, in accordance with the terms of the contract. Seven hundred ninety-nine meters had been secured.

Although Druffel's franchise provided for the construction within the town of Palo Alto of a gas manufacturing plant and distributing system, no plant for the manufacture or production of gas has been constructed within the town. The Gas Company's property within the town consists of a distributing system only. The gas which the Gas Company distributes is secured by it from the Pacific Gas and Electric Company under contract dated March 18, 1905, between Palo Alto Gas Company and United Gas and Electric Company (the predecessor in interest of the Pacific Gas and Electric Company). This contract is for a period of ten years, and provides that the United Gas and Electric Company shall deliver to the Palo Alto Gas Company at the latter's storage tanks at Palo Alto all the gas required by the Gas Company. This gas is to be of a quality specified in the contract and is to be delivered at a pressure of between thirty and eighty pounds. The Gas Company agrees to pay to the United Gas and Electric Company "a sum equal to 50 per cent. of the gross income derived from the sale of the said gas in the territory aforesaid" (being the town of Palo Alto and vicinity). The companies are still operating under this contract. It will be noted that the Gas Company pays for its gas an amount equal to 50 per cent. of the gross income derived from the sale of the amount of gas recorded on the Gas Company's meters.

The Gas Company has been unusually active in soliciting customers, with the result that in December, 1912, it claimed to have 1,353 meters in use. It claims to have sold during the year 1912, 28,952,900 cubic feet of gas. As the result of the Gas Company's activity in soliciting business the proportion of consumers to the population is unusually large.

Mr. L. P. Lowe, half owner of the company, testified that Palo Alto is one of the best gas towns in the world.

The gas distributed by the Gas Company is manufactured by the Pacific Gas and Electric Company at its Potrero plant in the city of San Francisco. It is there conveyed through a twelve (12) inch main to Martin Station, where it is compressed. It is then conveyed through a transmission line in a general southerly direction down what is known as the Peninsula to Redwood City, and thence by a branch transmission line to the city of Palo Alto, where the gas is delivered to the Gas Company for distribution. The transmission line down the Peninsula also delivers gas to South San Francisco, Burlingame, San Mateo, Hillsborough and Redwood City. The length of the transmission main to Redwood City is 23.73 miles and from Redwood City to Palo Alto 6.156 miles. According to the estimate of Assistant Engineer, Arthur R. Kelley of this Commission, there were as of September 14, 1912, 53,160 feet of two-inch mains, 39,285 feet of one and one quarter inch mains and 9,280 feet of one-inch mains in the Gas Company's distributing system, and 1,095 services. The distributing plant has been carefully constructed and is in a comparatively good state of preservation.

I shall now consider the question of the proper value to be assigned for the purpose of this case to the Gas Company's property used and useful in the public service. Every effort has been made to ascertain all the material facts bearing on this question. Under the Commission's direction, one of its engineers and one of its accountants made a careful investigation into the Gas Company's plant and books of account. After a preliminary refusal to permit an inspection of the books of the Palo Alto Gas Appliance Company, of which company I shall have more to say hereafter, the defendant co-operated fully with the Commission in presenting all the facts in its possession. The fullest opportunity was given to the Gas Company to present any evidence it considered material, and the company availed itself freely of this right. I shall attempt to consider the material facts



which I consider it from the the evidence to be entitled.

The authorized capital stock of the Gas Company has a par value of \$200,000. The stock has all been issued, and is held in equal shares by L. P. Lowe and D. O. Druffel. It was at first desired by the company to have an authorized bonded indebtedness of \$200,000. Under the law of this State, as it then stood, it was necessary to have an authorized capital stock of an equivalent amount. Nothing at all was paid for this stock. While the contract between Lowe and the Gas Company, dated January 31, 1905, and hereinbefore referred to, provided that 1,995 shares of the Gas Company's capital stock should be issued to Lowe upon securing the agreement with the United Gas and Electric Company, Lowe testified that the United Gas and Electric Company had approached him to see whether it could not sell him the gas and Druffel testified very frankly that his stock had cost him nothing. The plan to have an authorized bonded indebtedness of \$200,000 was later changed so that the bonds actually authorized amount to \$150,000, face value. Of the bonds so authorized 86 bonds, having a face value of \$86,000, were issued to L. P. Lowe as of January 1, 1908, in payment for the Gas Company's distributing system for which, under the contract, Mr. Lowe was entitled to receive \$100 per meter in bonds, and for supplies estimated at \$7,604.30. Thereafter additional bonds of the face value of \$10,000 were delivered as of January 1, 1910, in exchange for promissory notes of the Gas Company given to its stockholders in lieu of a cash dividend of \$10,000 declared out of surplus in February, 1910. There are at present outstanding 96 bonds having a face value of \$96,000. The bonds bear interest at the rate of 6 per cent. per annum.

There is no satisfactory evidence as to the original cost of the distributing plant which on July 1, 1907, was conveyed by Lowe to the Gas Company in return for bonds of the face value of \$86,000. The original records which would show the amount of money expended in the construction of the plant were destroyed in the San Francisco fire of April, 1906. As bearing on this question, I desire to refer to the

statement filed by the Gas Company with the town of Palo Alto as of December 31, 1908. This statement gives the value of the physical property as \$60,769.30, and adds thereto a value for business development in the amount of \$20,925. Mr. Lowe testified that the company thereafter spent in additions to the plant up to December 31, 1912, the sum of \$17,555.40. As I have already said, I consider the evidence on the point of original cost to be unsatisfactory.

The cost of reproducing the property new was the subject of a large amount of evidence. I shall consider this matter under three heads, as follows:

- (1) Manufacturing plant;
- (2) Transmission system;
- (3) Distributing system.

#### (1) MANUFACTURING PLANT.

As I have already stated, the gas distributed by the Gas Company is manufactured in the Potrero plant of the Pacific Gas and Electric Company, located in the city of San Francisco. Mr. John A. Britton, Vice-President and general manager of the Pacific Gas and Electric Company, and a witness for the defendant in this case, presented to the Commission a schedule showing the value of the Potrero plant and of the transmission mains between that plant and the city of Palo Alto, and also other data showing the earnings and expenses connected therewith. The valuation presented by Mr. Britton was prepared by J. G. White & Company, and represents the cost of reproducing the property new. This cost amounts to \$2,630,411 for the manufacturing plant. This cost includes a total of 26 per cent. for overhead charges. On the facts of this case I am of the opinion that this percentage should be reduced to 15 per cent. The Pacific Gas and Electric Company in addition to claiming that it was entitled to interest at the rate of  $8\frac{1}{2}$  per cent. annually on the value of the plant reproduced new, claimed the right to include in manufacturing cost an additional item for depreciation. Whether this is proper will depend largely on the use to which the amounts annually set aside for depreciation are devoted. In considering this matter, it should

& Company estimates the cost to reproduce new, whereas Mr. Britton testified that there was considerable depreciation in the plant, amounting to as high as 10 per cent. annually for certain items, and that the plant had been constructed several years ago.

To the theory expressed by Mr. Britton, that as long as a plant can do its work, it should be regarded for rate fixing purposes as having 100 per cent. value, this Commission cannot give adherence.

## (2) TRANSMISSION SYSTEM.

The valuation claimed by the Pacific Gas and Electric Company for its transmission system for the Potrero plant to Palo Alto properly chargeable to the Redwood District is \$127,483. The remarks made in the preceding paragraph with reference to percentage of overhead charges and proper basis for rate fixing apply equally to this item. Mr. Britton testified that in his opinion the life of this main was between fifteen and twenty years. It was constructed in the years 1905 and 1907.

## (3) DISTRIBUTING SYSTEM.

Two complete estimates of the cost of reproducing the Gas Company's distributing system, together with considerable additional fragmentary evidence on this question, were presented to the Commission.

Mr. C. L. Cory, a witness for the defendant, presented a complete estimate of the cost of reproducing the plant to-day under the conditions that were existent at the time the plant was constructed, in so far as possible. A summary of Mr. Cory's estimate of the cost of reproducing the physical portions of the plant on this basis is as follows:

Compression storage tanks, fittings, piping .....	\$ 5,352 00
Street mains .....	39,997 99
Gas services and regulators or governors.....	12,563 74
Gas meters and connections .....	14,302 90
Teams, wagons and tools.....	746 33
Furniture and fixtures .....	1,874 80
Stores and supplies .....	835 20
Working capital (nil).	

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Total .....\$75,672 96

In this estimate Mr. Cory includes for engineering, supervision, tools, casualty insurance, administration during construction and interest and taxes during construction, 12 per cent. for street mains and services and for meters an item of 11 per cent. for testing, store expenses, tools and breakage, supervision, administration, interest during construction and carrying charges. Mr. Cory includes no allowance for paving or repaving for the reason, as stated by him, that "it would seem that the amount of cutting of pavements of any kind at the time your distribution system was installed was of no considerable moment, although since the laying of your distribution system considerable paving has been put over them."

Mr. Arthur R. Kelley, one of the assistant engineers of the Commission, presented a revised complete estimate of the cost of reproducing new, as of September 14, 1912, the physical portions of the plant of the Gas Company, as follows:

(1) Distributing mains (including \$4,800 for pressure tanks) .....	\$26,735 00
(2) Services .....	6,982 00
(3) Pressure regulators .....	4,911 00
(4) Meters .....	10,182 00
(5) Furniture and fixtures .....	900 00
(6) Teams and vehicles .....	325 00
(7) Tools, implements and testing apparatus .....	412 00
	<hr/>
	\$50,447 00
(8) Engineering, superintendence and organization, 10 per cent. of items (1) to (7) inclusive.....	5,045 00
(9) Contingencies, 5 per cent. of items (1) to (8) inclusive	2,775 00
(10) Interest during construction, 3 per cent. of items (1) to (9) inclusive .....	1,749 00
(11) Stores and supplies .....	827 00
	<hr/>
TOTAL COST OF REPRODUCTION .....	\$60,843.00
(12) Paving to be torn up and relaid .....	38,856 00
	<hr/>
TOTAL COST OF REPRODUCTION INCLUDING PAVING....	\$99,699.00

Mr. Kelley testified with reference to the item for paving, that the item had been calculated so that if the Commission saw fit to include it as a part of the cost of reproducing the plant as it is to-day, the Commission might have the

the sole fact to be ascertained in determining the proper basis on which to fix rates, it might be logical to include the entire amount for tearing up and relaying pavement as estimated by Mr. Kelley. In view of the fact, however, that other elements, including original cost, must be considered, and that the amount actually expended by the Gas Company for this purpose was only \$1,198.24, it would seem more proper in determining the basis for fixing rates to follow the course pursued by Mr. Cory and not to include an amount for tearing up and relaying pavement in excess of the amount actually expended therefor.

It will be noted that Mr. Cory's estimate is \$14,829.96 higher than Mr. Kelley's. Of this amount, after making due allowance for the varying percentages for overhead charges, over \$14,000 difference is found in the items of compression storage tanks and the street mains. It will be noted that Mr. Cory estimates the compression storage tanks at \$5,352, while Mr. Kelley estimates them at \$4,800. In its report to the town of Palo Alto, dated December 31, 1908, the Gas Company showed the following item: "4 underground gas storage tanks with fittings, regulators, etc., at \$1,200 each, \$4,800."

The greatest divergence is in the matter of street mains. Without considering overhead expenditures, the estimates of Mr. Cory and Mr. Kelley are as follows:

	CORY	KELLEY
1 inch pipe .....	30 cents	16 cents
1¼ inch pipe .....	33.5 cents	18 cents
2 inch pipe .....	36 cents	22 cents

Mr. Cory seems to have relied largely on a job of laying two inch mains performed by the Gas Company for Stanford University, and on a large amount of work performed by the Los Angeles Gas and Electric Corporation in adobe streets in and about Los Angeles with comparatively little paving, where the original costs were all available, and where a record was kept of the work as it progressed, as testified to by him on page 398 of the transcript.

With reference to the Stanford job, the cost as claimed by the Gas Company was \$1,614.63 for laying 5,134 feet of two inch main, or 31.5 cents per linear foot, which price included superintendence and depreciation of tools. The job was admittedly a detached one, and at least a portion of the laying was done in macadamized or graveled streets.

With reference to the work in and about Los Angeles, Mr. Cory's appraisement of the Los Angeles Gas and Electric Corporation's property was filed with the Board of Public Utilities of the city of Los Angeles. A detail of this report, in so far as it affects the cost per foot of wrought iron street mains exclusive of paving, has been filed with the Commission, and was introduced as an exhibit in this case. It shows that the total cost, exclusive of paving, and not including overhead expenses, of laying two inch mains, including materials and labor was only 21.408 cents. This item, it will be noted, is within a fraction of a cent of Mr. Kelley's estimate. The item does not include the cost of replacing street surface. This cost was estimated to vary from 1.4 cents per foot for unimproved streets to 41.75 cents per foot for asphalt streets. The evidence also shows that an appraisal prepared by J. G. White & Company for the San Joaquin Light and Power Company estimates the cost of laying two inch high pressure gas mains in the city of Bakersfield at 23.6 cents per foot; in the city of Selma at 22.9 cents per foot, and in the city of Merced at 22.6 cents per foot. I am equally convinced from the evidence in this case that Mr. Kelley's estimate on two inch pipe may be slightly low and that Mr. Cory's estimate is much too high. I am using the two inch main as illustrative, and will not pause to analyze the cost for one and for one and one quarter inch mains, as to which the same general results will follow.

Mr. Kelley confined his estimate to a valuation of the physical elements of the Gas Company's plant, and did not undertake to place an estimate on the item which is variously called "going value," "going cost," "development value," "development cost," "cost to get the business," and by other names. Mr. Cory included amounts for the expense of organization, cost of advertising and other direct development expenses,

the interest on a physical valuation of about \$60,000 for one and one half years after gas was first served by the Gas Company's system, and the difference between the receipts and operating expenses for this one and one half year period as estimated by a curve of the growth of the company's business. Mr. Cory's estimate is as follows:

Organization expense .....	\$ 2,500 00
Six per cent. for 1½ years on \$60,000 .....	5,400 00
Deficit or margin between operating expenses and revenue, average for 1½ years .....	6,000 00
Expense, advertising, etc., in developing business .....	2,000 00
<b>TOTAL .....</b>	<b>\$15,900 00</b>

I would say, in passing, that the item of organization expense seems to duplicate the item of administration during construction already estimated by Mr. Cory in his physical appraisal.

In this connection I desire to quote from the decision of the Wisconsin Railroad Commission in the case of *State Journal Printing Company vs. Madison Gas and Electric Company* (Vol. IV Wisconsin Railroad Commission Reports, 501, 577) as follows:

"Investigations of the facts involved make it quite obvious that justice between the investors on the one hand and the consumers on the other requires that in valuing public utilities consideration should be given to the amounts expended by the former in building up the business of such plants. This is especially true when the earnings of a utility have not been sufficient to meet reasonable expenditures for development of the business and besides this cover operating expenses, depreciation, and reasonable returns on the investment. No public utility can be a paying concern until it has obtained a paying business. To secure enough takers so that the revenues obtained from them will adequately meet all reasonable outlays, is a matter that usually requires both expenditures and time. Comparatively few plants are therefore paying at first. Several years are often required to obtain customers enough for a paying

business. In the meantime the plants have to be kept in operation and the losses from such operation made up by investors. When these losses are due to such delays in securing the required amount of business which cannot be reasonably avoided, and have not been covered by subsequent surplus earnings, it is difficult to avoid the conclusion that they must also be regarded as one of the elements that should be considered in appraising the plant and fixing their rates. If investors are not compensated for such losses either by being allowed reasonable returns thereon or through surplus earnings, they will not continue to invest their money in plants of this kind. Again the investors would seem to be entitled to such compensation on the ground of equity alone; for these losses enter into the cost of the service, and, under normal conditions, it is only fair that the rates charged for the services rendered are fixed at a level that is high enough to cover all reasonable costs."

That there are certain actual costs incurred in developing the business during its early stages, for which costs the utility is entitled to be reimbursed, just as clearly as it is entitled to a return on the physical portions of its plant, seems to be too obvious for argument. The investor must go into his pocket to meet one kind of cost as clearly as the other. There are two schools of thought with reference to the manner in which the so-called "going concern" value or "development cost" should be met. The supporters of one school are of the view that these items should be added to capital account, while those of the other school believe that they should be taken care of by rates higher than would otherwise be in effect, during the first years of the utility's existence. The difficulty with the first view is that its adoption will result in the increase of the permanent capital account and the consequent payment of higher rates for all time to come. The difficulty with the latter view is that it casts upon the patrons during the first years the duty of paying rates even higher than the usual relatively high rates which are paid at the outset of a utility's history. I am of the opinion that



such costs, legitimately and wisely incurred, should be taken care of in some way, but the exact method to be pursued, and the extent to which consideration should be given to such items, will depend upon the facts of each particular case. It might well be, for instance, that if the utility is unwisely conceived or struggles against unusual difficulties, the cost of developing the business including the early losses may run up to almost the entire value of the physical plant, if not in excess thereof. It may happen, also, that while in one case the addition of these costs to capital account might be perfectly fair, in another case justice will require that these costs be reimbursed out of higher rates during the first few years, or that some combination of these theories be adopted. In the present case in giving consideration to Mr. Cory's estimate, it should also be borne in mind that on January 1, 1910, being some two and one half years after the Gas Company took over the plant, a dividend of \$10,000 out of surplus earnings was declared and that the amounts which have been charged off to depreciation have admittedly been larger than necessary. In finding the value to be used as a basis for fixing rates in this case I shall give due consideration to the element of going concern value.

With reference to the value of the plant in its present condition, or the cost of reproduction less depreciation, Mr. Cory presented no estimate. Mr. Kelley reached the conclusion that the ratio of the present condition of the distributing system to the cost of reproduction new is approximately 77 per cent. The fact that the property is not new will have material bearing in determining the proper basis for fixing the rate in this case.

Before leaving these engineering questions, I deem it pertinent to comment on the very important and responsible position of engineers and other experts who testify before this Commission in matters of valuation and in other matters affecting public utilities. On the accuracy of their testimony will depend to a large extent the just solution of many of the problems presented to the Commission. In order that the Commission may be fair in its decisions, it must know the absolute truth.

I desire to express the hope that all engineers testifying before the Commission will realize their high function and will consider themselves in so far as possible as witnesses not for the party who calls them, but for the people of the State of California sworn to tell the Commission the truth to the best of their knowledge and ability. The Commission will from time to time have occasion to check over the testimony of the various engineers appearing before it, and the weight which the Commission will give to the testimony of these various engineers and other experts will depend very largely on how closely the estimates and other testimony given by them check up with what the Commission after due consideration believes to be the truth. I am hopeful that before long the engineer who seeks at all times to speak the absolute truth will be the one most in demand by public utilities in cases pending before this Commission.

This Commission will scrutinize the testimony of its own engineers with the same care with which it examines the testimony of other engineers testifying before it. The fact that one of the Commission's engineers reaches a certain result, or uses a certain percentage or adopts a certain theory, is by no means conclusive on the Commission. For instance, in the present case Mr. Kelley, out of an apparent desire to be at least fair, has allowed 5 per cent. for contingencies to take care of items which might have been overlooked. I have very serious doubts as to whether in estimating the cost of producing a property new, when all the items which went into the property are clearly ascertainable, any allowance whatsoever should be made for this class of contingencies. Such items as taxes and insurance, however, should be taken care of. There may be reason for some allowance for contingencies in addition to taxes and insurance when an engineer is estimating the cost of a plant which is to be constructed, but very little when the plant has actually been constructed and the sole question is what it would cost to reproduce the existing plant new. It should also be borne in mind that percentage adopted by the Commission as fair in one case may be found not to be fair in another. Each case must be judged on its own merits.

I have now considered the principal evidence in this case bearing on the question of the value to be assigned to the plant for the purpose of establishing the rate of return. The elements to be considered in establishing the rates of compensation to be collected by transportation companies are laid down in the case of *Smyth vs. Ames* (169 U. S. 466), in which case the court at page 546 uses the following language:

"We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. And, in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth."

These same tests may be considered in ascertaining the basis on which to establish the rate to be charged by other classes of utilities until the Supreme Court lays down another rule. In finding the value in this case, I have considered all the elements referred to by the Supreme Court, in so far as they have been presented in the evidence in this case, giving each such weight as it seemed to merit, with a desire to find a value which should be just and equitable.

After a careful consideration of all the facts I find as a fact that the fair value of the property of the defendant used and useful for the public service, as disclosed by the evidence in this case is not in excess of the sum of \$69,250.

I shall now consider additional elements in the problem, namely, maintenance, operation, depreciation, interest and taxes. I shall follow the general plan which I pursued in connection with ascertaining the value of the different portions of the plant or system used in the manufacture, distribution and transmission of the gas.

(1) MANUFACTURE OR PRODUCTION COST.

The Pacific Gas and Electric Company gives the annual cost of maintenance and operation of its Potrero plant as \$924,231. There is no data in the evidence on which this item may be questioned. The company also claims an item of \$63,722 for depreciation. The company cannot consistently ask for a return on its property as if it were new and also expect to set aside a depreciation fund. The company also claims an item of \$223,585 for interest. This is interest at the rate of  $8\frac{1}{2}$  per cent. on the cost of reproducing the property new, as reported by J. G. White & Company. In reply to the Commission's inquiry as to how the percentage was arrived at, Mr. Britton testified that the company sold its 5 per cent. bonds at 85, and that while this amounted only to paying interest at the rate of 5.88 per cent. there was a provision in the company's bond mortgage to the effect that no additional bonds may issue until the company has earned one and one half times the amount of the bond interest. The discount on the bonds amortized over the life of the bonds brings the annual cost to 6.1 per cent., and adding thereto one half of the 5 per cent. makes the total of 8.6 per cent. I am not at all impressed with this line of reasoning. It amounts in effect to asking the public to pay additional rates so as to bring the earnings up to one and a half times the bond interest, which earnings are then to be capitalized to serve as the basis of future rates. Mr. Hockenbeamer, auditor of the Pacific Gas and Electric Company, testifies that on first-class mortgages in San Francisco on large projects bonds are being issued bearing  $5\frac{1}{2}$  per cent. interest, while

smaller loans cost 7 or 8 per cent. I am convinced that the item of interest as claimed by the Pacific Gas and Electric Company is in excess of the amount which should be allowed. Considering these various items, including taxes, and bearing in mind a loss of at least 14 per cent. in transmission from the Potrero plant to the meters in Palo Alto, I find that the cost of producing the gas which is thereafter delivered in Palo Alto, including a fair return on the investment, is not to exceed 30.694 cents per thousand cubic feet. In making this finding the Pacific Gas and Electric Company's estimate of the cost of reproducing its property new is taken without question except as to the item of percentage for overhead expenses.

## (2) TRANSMISSION COST.

The Pacific Gas and Electric Company claims an item of \$12,800 for maintenance and operation in connection with the transmission of the gas from the Potrero plant to Palo Alto. This item is undoubtedly much higher than it should be by reason of the fact that an undue proportion of the maintenance and operation expenses at Martin Station has been segregated to the Peninsula high pressure transmission mains. The actual cost of maintenance and operation of the Martin Station and the transmission line, properly chargeable to the Redwood District, should not be in excess of \$6,000. To be very liberal, I am considering it as \$8,000. These items in common with all the other items presented by the Pacific Gas and Electric Company, are subject to revision, if they should become relevant in any future proceedings before this Commission. The remarks hereinbefore made under the head of production cost with reference to interest and depreciation apply equally to this heading. The Pacific Gas and Electric Company claims an annual item of \$8,734 for depreciation. This is almost 7 per cent. and is undoubtedly too high.

I find from the evidence in this case that on a very liberal estimate the transmission cost of the gas manufactured in the Potrero plant and thereafter delivered to the consumers of the Gas Company, including a fair return on the investment, is not in excess of 22.76 cents. The cost of production and transmission is consequently not in excess of 53.454 cents per thousand cubic feet.

### (3) DISTRIBUTION COSTS.

The trial balance of the gas company for the year 1912, taken in the month of December, is reported by the company as follows:

GAS		DEBIT	CREDIT
Gas sales .....	\$43,429 35		
Gas purchases .....	\$21,714 68		
Gas sales wages .....	4,615 40		
Gas sales expenses .....	1,224 39		
Rent .....	260 00		
General expense .....	770 03		
Insurance .....	109 20		
Property rental .....	528 67		
Property repairs .....	81 80		
Franchise privilege .....	774 81		
Legal expense .....	765 05		
Advertising .....	2 25		
Interest .....	1 20		
Officers' salaries .....	2,400 00		
Meter and governor repairs	123 75		
Development .....	203 23		
	<u>33,574 46</u>		
			\$9,854 89
<b>MISCELLANEOUS CREDITS</b>			
Service .....	\$261 10		
Discount .....	2 21		
Previous year .....	356 67		
Incidental receipts .....	4 48		
	<u></u>		624 46
<b>MISCELLANEOUS DEBITS</b>			
Depreciation .....	\$4,240 08		
Incidental disbursements ..	44 05		
Bad debts .....	190 20		
	<u></u>	\$4,474 33	
<b>TAXES, FIXED, ETC.</b>			
Taxes .....	\$1,478 36		
Bond interest .....	5,760 00		
	<u></u>	7,238 36	
E. & E. Loss and Gain .....			1,233 34
TOTALS .....		\$11,712 69	\$11,712 69

The item of gas sales wages includes the entire salary of the general manager, a portion of which should properly be chargeable to the Palo Alto Gas Appliance Company, a subsidiary corporation of the Gas Company formed for the

purpose of handling gas appliances and of installing the service connections inside of the property line, and the meters. The defendant insists that it is not intended that this company shall make a profit, but that the company was organized as a matter of convenience to perform services which the Gas Company would otherwise have to perform. The annual report of the Appliance Company for the year 1912 shows a profit of \$1,100.31, on the assumption that the appliances on hand, which are of comparatively small value, are worth what they cost, and that the outstanding accounts of the company are good. As the general manager of the Gas Company devotes a considerable portion of his time to the Appliance Company, of which company he is also a general manager, an equitable portion of his salary should be charged to the Appliance Company, thereby decreasing to that extent the operating expenses of the Gas Company. The same is true of the item of rent. The testimony shows that the front portion of the store is devoted to the Appliance Company, and that a large portion of the floor space is devoted to that company. The same observation applies to other items in the expense account including the item of officers' salaries amounting to \$2,400. It may be said in passing that the total of items which should be charged to the Appliance Company in case that company made a profit to that extent would be in excess of the Appliance Company's net profit for the year ending December 31, 1912. The item of \$765.05 for legal expense consists mostly of expense in connection with two suits instituted by the Gas Company, one against the city of Palo Alto and one against the Railroad Commission, to prevent the public authorities from fixing the defendant's rates. A utility has, of course, the right to assert its rights in court in case a public authority has treated it unjustly. I understand that in the suit against the city of Palo Alto the city has practically confessed judgment. In the suit against the Railroad Commission, however, to prevent the Railroad Commission from exercising its authority under the law, the Commission was sustained in court. I am disinclined under these circumstances to allow any amount for the legal expenses incurred in the suit against this Com-

mission. Otherwise, a public utility could pay expensive legal fees in seeking to prevent its lawful regulation by public authority, and then make the public pay the bill.

The item of depreciation amounting to \$4,240.08 is frankly admitted by Mr. Lowe to be too high. Whether or not a utility makes a profit very often depends on the amount of the item charged to depreciation. I am convinced from the evidence of this case that the amount properly chargeable for depreciation is not in excess of \$2,748.

This brings me to a consideration of the final question in the case, namely, the amount of return to be allowed the Gas Company on its plant. No fixed percentage applicable to all cases and all classes of utilities can be established by this Commission. Each case must be judged on its own merits. It may well be that a utility in one community would be entitled to one rate of return while a similar concern in another community would be entitled to a different rate. It may be that a large and solidly established utility will not be entitled to as high a return as a smaller utility which is struggling against adverse circumstances. The most that can be said by way of general principles is that the return should be at least the average return which is earned by other classes of business of the same degree of hazard in the same community. The Commission in fixing a rate of return must be liberal, lest too strict a policy result in turning capital to other fields of enterprise. California needs development by public utilities, and this Commission's policy should be a broad and liberal one, so as to encourage capital to develop the State by legitimate public utility enterprises where needed. The Commission should be careful not to permit an inflation of prices in ascertaining the value of the property of a public utility used and useful for the public purpose, but should be liberal in establishing the rate of return on that value. Bearing in mind all the facts of this case as shown by the evidence, I find that a rate of return of 8 per cent. on the value of the property of the Palo Alto Gas Company used and useful for the public purpose, as fixed herein, is at least a fair and equitable rate of return. If anything, the rate is too high by reason of the fact that the



Commission has been more than liberal in establishing the basis of value.

The contract between the Gas Company and the United Gas and Electric Company can not stand as against the power of this Commission, under the Constitution and the Public Utilities Act, to fix just and reasonable rates. Otherwise, a utility, by entering into contracts with third parties for the supply of its commodity or otherwise could effectually nullify the power of the state, under the police power, to supervise and regulate its public utilities. I assume that as a result of this decision the parties to the contract will make the necessary modifications therein.

During the year 1912, the Gas Company sold 28,952,900 cubic feet of gas. I find that the cost of distributing gas by the Gas Company, taking into consideration all material elements, including a fair return on the investment and taxes, is not reasonably in excess of 65.83 cents per thousand cubic feet. Adding this amount to the total of 53.454 cents for manufacture and transmission gives a total of \$1.19284 as a liberal outside cost including a fair return on the investment, per thousand cubic feet of gas sold in Palo Alto and the adjacent territory by the Gas Company. I have tried throughout to be at least fair to the Gas Company. It may be that the rate herein established will hereafter be found to be in excess of a reasonable rate, but I think it wiser to err, if at all, on the side of justice to the utility, particularly in view of the fact that the reduction herein ordered will be a substantial one, amounting to approximately 20 per cent. in the Gas Company's revenue on the improbable assumption that the consumption will not increase. It should be borne in mind also that the Gas Company does not manufacture its own gas, but secures it through a transmission line from a point twenty-three miles distant. It should be remembered also that the rate herein established is based on the facts applicable to this case, and that this rate cannot be taken as expressing this Commission's view as to what may be the fair and reasonable rate for artificial gas to be charged and collected in any other community when the facts may be different.

There is no complaint in this case with reference to the minimum of 50 cents per month per meter, and this minimum will not be disturbed. I find that there is not enough difference in the amount of gas used by the different customers of the Gas Company to make necessary a graduated scale of rates. After a careful review of all the facts of the case I find that the existing rate of \$1.50 per thousand cubic feet of gas now charged by the defendant in this case is an unjust and unreasonable rate, and that a just and reasonable rate would be \$1.20 per thousand cubic feet, and I hereby recommend that such rate be established.

I submit herewith the following form of order:

### ORDER.

The City of Palo Alto having filed with this Commission its complaint against the Palo Alto Gas Company, alleging that said company's existing rates for artificial gas are unjust and unreasonable and requesting this Commission to establish rates which shall be just and reasonable, hereafter to be charged and collected by said Palo Alto Gas Company, and the parties having stipulated that all the rates for the entire territory served by the Palo Alto Gas Company both within and without the city of Palo Alto may be considered to be at issue in this case, and a public hearing having been held and evidence having been introduced by both parties, and the Commission being fully advised in the premises, we hereby find as a fact:

(1) That the existing rate of \$1.50 per thousand cubic feet of gas charged and collected by the Palo Alto Gas Company in the city of Palo Alto, and in the territory adjacent thereto, served by said company, is an unjust and unreasonable rate.

(2) That the just and reasonable rate for gas to be charged and collected by said Palo Alto Gas Company in the city of Palo Alto, and in the territory adjacent thereto, served by said company, is not to exceed the sum of \$1.20 per thousand cubic feet of gas delivered, with a minimum charge of 50 cents per month per meter.

Basing our conclusions on the foregoing findings of fact and on the further findings of fact contained in the opinion which precedes this order,

*It is hereby ordered*, That Palo Alto Gas Company within twenty (20) days from the date of service on it of a copy of this opinion and order, publish and file with this Commission, and thereafter charge and collect from its customers in the city of Palo Alto and the territory adjacent thereto served by said company, the sum of \$1.20 per thousand cubic feet of gas delivered, with a minimum charge of 50 cents per meter per month.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 12th day of March, 1913.

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**IN THE MATTER OF THE APPLICATION OF STOCKTON TERMINAL AND EASTERN RAILROAD COMPANY FOR AN ORDER AUTHORIZING AN ISSUE OF BONDS OF THE FACE VALUE OF THREE HUNDRED SEVENTY-EIGHT THOUSAND EIGHT HUNDRED DOLLARS.**

**Application No. 336—Decision No. 514.**

*Decided March 20, 1913.*

**Authorization of Bonds—Financial Condition of Applicant—Prospect of Future Improvement.**

Applicant desiring (a) to complete its line of railway from the end of its present track in Stockton to Stockton Channel and ship's side, a distance of some 2.11 miles; (b) to make improvements in its line of railway as now constructed between Stockton and Bellota, and to purchase a steam locomotive and a motor car, and (c) to extend its line of railway from Bellota to the proposed terminus at Jenny Lind, a distance of some 10.9 miles, in order to finance said purpose, petitioned for authority to issue mortgage six per cent. bonds in the face amount of \$378,800 and to sell or pledge same; to issue six per cent. collateral bonds in the face amount of \$30,000; and to apply to the above purposes the proceeds from the sale of bonds heretofore authorized by order in Application No. 51 in so far as such proceeds are not necessary for the purposes specified in said order. Applicant has been and is now operating at a loss, and the question presented was whether a railroad which is unable to pay the in-

terest on its present bonded debt should be authorized to issue several hundred thousand dollars of additional bonds. Applicant contended that with the completion of its line of railway at both ends, and with adequate motive power, it could convert the present deficit into a profit and meet all fixed charges, including interest on the proposed bond issue, and in support of this contention presented estimates showing the revenue which it expects to derive from freight and passenger traffic when its line has been completed as proposed.

*Held:* The Commission is unable to say from the evidence whether or not applicant will be able to earn the revenue which it anticipates. In this case, as in all other cases involving the development of the State, in which there is a reasonable doubt, the doubt should be resolved in favor of the utility. The Commission can see to it that the money derived from the sale of the securities goes into the property, but it cannot say whether or not the enterprise will succeed and will be able to pay the hoped for interest on bonds or dividends on stock.

Application granted, authority being given applicant to expend not to exceed \$72,000 for extending the railroad to Stockton Channel and \$25,000 for purchasing a steam locomotive and a motor car and for such purposes (1) to issue and sell at not less than 80, first mortgage bonds in the face amount of \$121,000; (2) or alternative therewith to pledge sufficient of its first mortgage bonds, at not to exceed two to one, to secure \$97,000, or so much thereof as may not be secured from a sale of the bonds in the amount authorized to be sold; (3) or, alternative with, the foregoing authorizations to issue and sell at not less than 80, collateral bonds in the amount of \$30,000 secured by first mortgage bonds in ratio of not to exceed one and one half to one. Also authority given (4) to issue and sell at not less than 80, additional first mortgage bonds in the face amount of \$224,000, the proceeds thereof to be used for improvements on applicant's line from Stockton to Bellota, exclusive of the steam locomotive and motor car, and for extensions of applicant's railway from Bellota to Jenny Lind. The aforesaid issues conditioned upon the prior submission of satisfactory evidence showing that a binding contract or contracts for the sale of the first mortgage bonds have been made.

#### **APPEARANCE:**

*W. H. H. Hart, for applicant.*

#### **REPORT.**

*THELEN, Commissioner:*

This is an application for an order of this Commission authorizing the issue of bonds and the use for other purposes of the proceeds of bonds heretofore authorized, as will hereinafter appear in greater detail.

Applicant was incorporated under the laws of California on October 28, 1908, for the purpose of constructing a railroad of standard gauge, to be operated by electricity or other

motive power from the city of Stockton easterly and north-easterly to the town of Jenny Lind, in Calaveras county, a distance of some 30 miles. Applicant's line of railroad has now been completed along a portion of the route proposed from a point within the city of Stockton to Bellota, situated about 18 miles northeast of Stockton, and is being operated from Stockton to Fine, a distance of some 15.2 miles. For further information concerning applicant's general condition, see this Commission's opinion and supplemental opinion in Application No. 51, which opinion and supplemental opinion, in so far as applicable, are made a part of this opinion.

Applicant's authorized capital stock consists of 6,000 shares of the par value of \$100 each, whereof 2,639 shares have been issued. From the sale of this stock applicant has received \$183,900 in cash and the agreement with The United Investment Company, hereinafter referred to. Applicant has issued its trust deed, dated April 1, 1911, to the Mercantile Trust Company of San Francisco, to secure the issue of thirty (30) year 6 per cent. bonds totaling \$500,000. Of the bonds so authorized, first mortgage bonds of the face value of \$116,000 have now been issued as follows:

Bonds sold and delivered .....	\$ 47,000 00
Bonds pledged as collateral to secure promissory notes of \$27,000 .....	54,000 00
Bonds pledged to secure payment of collateral trust bonds of \$10,000 .....	15,000 00
<b>TOTAL .....</b>	<b>\$116,000 00</b>

Applicant has also issued 100 collateral gold bonds of the denomination of \$100 each under trust agreement with Mercantile Trust Company of San Francisco, providing for the issue of 500 such bonds, dated April 1, 1911, and due April 1, 1941, with interest at the rate of 6 per cent. per annum. Applicant has therefore now outstanding first mortgage bonds of the face value of \$116,000 and collateral bonds of the face value of \$10,000, making a total of \$126,000. Applicant also owes some \$12,000 on current bills and other unsecured indebtedness.

Applicant attached to its petition, as exhibit "B," a statement of expenditures for road and equipment as of October 31, 1912, totaling \$314,448.71. This amount, however, includes an item of \$66,660.85, of which amount \$60,000 consists of capital stock issued by applicant to The United Investment Company, the owner, of all its capital stock except 9 shares, in return for the agreement of the investment company to issue its own stock at varying prices, ranging from 125 per cent. of par upwards in exchange for such bonds of applicant as the purchasers thereof might, from time to time, desire to exchange for such stock. This agreement was supposed to render applicant's bonds more salable. As a matter of fact, this contract is of little or no value to applicant for the reason that few of applicant's bondholders would care to exchange their bonds for stock in the investment company. This Commission's engineering department has reported to the Commission that the original cost of that portion of applicant's property which is being operated is some \$213,059.13, that the cost of reproducing the physical property is some \$213,267.46 and that the present value of the physical property is some \$199,717.83. The figures just given apply only to the operated portion of applicant's line of railway and only to the physical property. While the Commission has not as yet formally passed upon the question of the value of applicant's line of railway, the figures herein given have some bearing on that question and are given for what they may be worth in the present application.

Applicant now also asks for an order of this Commission as follows:

(a) Authorizing the issue of first mortgage bonds of the face value of \$378,800 for the purposes hereinafter specified;

(b) Authorizing the issue of collateral bonds of the face value of \$30,000 for the purposes hereinafter specified;

(c) Authorizing the use of any or all of the first mortgage bonds as collateral security for funds to be borrowed on short term loans for the purposes hereinafter specified at the ratio of \$2.00 par value of bonds for \$1.00 of funds borrowed;

(d) Authorizing the application to the purposes of this application of the funds derived from the bonds authorized by this Commission's order in Application No. 51 and not necessary for the purposes specified in said order.

In support of its petition, applicant has presented an estimate of moneys necessary for the completion of its line of railway and for the purchase of a motor car and a steam locomotive, as shown on page 5 of the petition, totaling \$303,040. This item includes \$30,000 for legal expenses and interest during construction, clearly an excessive amount.

It appeared at the hearing that applicant desires money principally for three purposes: (a) to complete its line of railway from the end of its present track in Stockton to Stockton Channel and ship's side, a distance of some 2.11 miles; (b) to make improvements in its line of railway as now constructed between Stockton and Bellota, and to purchase a steam locomotive and a motor car; and (c) to extend its line of railway from Bellota to the proposed terminus at Jenny Lind, a distance of some 10.9 miles.

Applicant has a valuable franchise in the city of Stockton, authorizing the extension of its line of railway through and along the streets of Stockton to Stockton Channel. Applicant must construct this portion of its line of railway during the next few months or lose its franchise. The evidence shows that when this track to ship's side has been completed, applicant will be able to handle a much larger percentage of the produce of the territory which it traverses than is the case at present. Because of applicant's inability hitherto to deliver its freight at ship's side, and also because of its poor and unreliable service, due to inadequate and unreliable motive power, the farmers living along the line of applicant's railway have preferred, where possible, to haul this produce in wagons into Stockton. Applicant desires now to remove both of these causes of its failure to do a larger business. In addition to completing its line of railway to the water front, applicant desires also to improve its present line, principally by the purchase of a steam locomotive and a motor car and the providing of adequate depot facilities, station buildings and terminal grounds.

Applicant desires, further, to complete its line of railway to Jenny Lind, near which place are located beds of gravel from which applicant expects to derive a considerable revenue.

Mr. R. A. Thompson, this Commission's chief engineer, has prepared the following estimates of the cost of the three main extensions or improvements which applicant has in view:

# ESTIMATE OF COST TO CONSTRUCT AS PER SPECIFICATIONS FILED.

## 1. END OF PRESENT TRACK IN STOCKTON TO STOCKTON CHANNEL, 2.11 MILES.

Grading 26 blocks at \$105 .....	\$2,730 00
Trestles .....	35,100 00
Ties, 5,942 at 61 cents .....	3,624 62
Rails, 199 tons, 60 pounds, at \$39.....	7,761 00
Railroad crossings, 21, at \$214 .....	4,500 00
Fastenings .....	993 42
Tracklaying, etc. ....	2,325 00
Paving in Stockton .....	7,000 00
Engineering and superintendence, 5 per cent.....	3,196 70
Legal expenses and contingencies, 3 per cent.....	1,918 02
Interest during construction, 3 per cent.....	2,071 44

TOTAL ESTIMATED COST .....\$71,120 20

## 2. IMPROVEMENTS—STOCKTON TO BELLOTA, 15.23 MILES.

Right of way, The Oaks addition, Stockton.....	\$1,600.00
2.07 acres along line.....	1,242 00
Depot grounds, Stockton .....	7,000 00
Terminal grounds, Stockton.....	7,000 00
Trestles .....	350 00
Tools .....	1,150 00
Fencing .....	6,090 00
Telephone .....	2,000 00
Station buildings .....	3,500 00
Fuel station .....	1,000 00
Equipment, 1 steam locomotive.....	12,500 00
1 motor car .....	12,500 00
Engineering and legal expenses, 5 per cent.....	2,796 60
Contingencies, 3 per cent.....	1,761 84

TOTAL ESTIMATED COST .....\$60,490 44

## 3. NEW EXTENSION—BELLOTA TO JENNY LIND, 10.9 MILES.

Right of way .....	\$5,000 00
Grading .....	28,029 00
Trestles .....	5,924 00
Culverts .....	1,588 00
Ties, 36,327, at 61 cents.....	22,159 47
Rails, 1185.14 tons, at \$39.....	46,220 46



Switches, 21 sets, at \$80.....	1,680 00
Fastenings .....	5,196 58
Tracklaying, etc .....	6,450 00
Tools .....	1,350 00
Telephone .....	1,000 00
Station buildings, etc. ....	750 00
Turn table .....	2,500 00
Water station .....	500 00
Engineering and superintendence, 5 per cent.....	6,417 35
Legal and contingencies, 3 per cent.....	3,850 41
Interest during construction, 3 per cent.....	4,158 45

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TOTAL ESTIMATED COST .....\$142,773 72

#### SUMMARY.

1. STOCKTON .....	\$71,120 20
2. STOCKTON TO BELLOTA (INCLUDING EQUIPMENT).....	60,490 44
3. BELLOTA TO JENNY LIND.....	142,773 72

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GRAND TOTAL .....\$274,384 36

The matter of the greatest difficulty in connection with this application is that applicant has been and is now operating at a loss. Applicant's annual report for the year ending June 30, 1912, on file with this Commission, shows as follows:

Operating revenue .....	\$15,447 10
Operating expenses .....	20,952 93
<hr/>	
NET OPERATING DEFICIT .....	\$5,505 83
Hire of equipment .....	785 60
<hr/>	
NET CORPORATE LOSS .....	\$6,291 43

The question which confronts this Commission is whether a railroad which is unable to pay the interest on its present bonded debt should be authorized to issue several hundred thousand dollars of additional bonds. Applicant contends that if it can complete its line of railway at both ends and secure adequate motive power, it can convert the present deficit into a profit and pay the interest on all its outstanding bonds, including the proposed new issue. To support this contention, applicant presented estimates showing the revenue which it expects to derive from freight and passenger traffic when its line has been completed as proposed.

If these hopes are realized, applicant will be able to meet all fixed charges, including interest on the bonds now applied for. I am unable to say from the evidence whether or not applicant will be able to earn the revenue which it anticipates. In this case, as in all others involving the development of the State, in which there is a reasonable doubt, I believe that the doubt should be resolved in favor of the utility. The Commission can see to it that the money derived from the sale of the securities goes into the property, but it cannot say whether or not the enterprise will succeed and will be able to pay the hoped for interest on bonds or dividends on stock.

I was at first disinclined to recommend the issue of any additional bonds, unless they were all sold, so as to guarantee the completion of the railroad. Otherwise, a portion of the bonds might be sold and the proceeds invested in the property, and then, because of the impossibility of disposing of the remaining bonds, the entire enterprise might go into the hands of a receiver. In view of the urgent need, however, of building to the water front to save applicant's franchise, as well as to increase its traffic, and also of the further immediate need of a steam locomotive and a motor car, and of the further fact that applicant can not improve its condition unless it secures funds for these purposes, I have decided to recommend the issue of bonds for these purposes, to be sold so as to realize not less than 80 per cent. of the face value of the principal thereof, besides interest accrued thereon, or to be pledged as collateral security, to secure the moneys necessary for these purposes, at a ratio of not to exceed \$2.00 in bonds to \$1.00 of indebtedness. The remaining bonds hereby authorized may be sold so as to realize not less than 80 per cent. of the face value thereof, besides interest accrued thereon, but only when the entire issue has been sold, so as to provide funds to take up the indebtedness secured by bonds and to complete the railroad. I recommend that applicant be authorized to apply to the completion of its line of railway to the Stockton water front or to the acquisition of a steam locomotive and a motor car the moneys derived from the issue of the bonds authorized by this Com-

mission's order in Application No. 51 and not necessary for the purposes specified in said order. I recommend, further, that applicant be authorized to issue its collateral bonds of the face value of \$30,000 to be secured by its first mortgage bonds of the face value of \$45,000 in accordance with the provisions of the collateral trust deed, and to be sold so as to realize not less than 80 per cent. of the face value of the principal thereof besides interest accrued thereon, the proceeds to be used in the extension of the line of railway to the Stockton Channel or in the purchase of said locomotive engine or motor car.

I find that the proceeds from the issue of the bonds authorized to be issued by the order which follows this opinion are not in whole or in part reasonably chargeable to operating expenses or to income and submit herewith the following form of order:

#### ORDER.

Stockton Terminal and Eastern Railroad Company having applied to the Railroad Commission of the State of California for an order authorizing the issue by said company of first mortgage gold bonds of the face value of \$378,800, said bonds to be payable on the first day of April, 1941, unless sooner redeemed and to bear interest at the rate of six (6) per cent. per annum payable semi-annually on the first days of April and October of each year until the principal is paid, and secured by a trust deed or mortgage upon all property of the company, and also authorizing the issue by said company of collateral gold bonds of the face value of \$30,000, said bonds likewise to be payable on the first day of April, 1941, unless sooner redeemed, and to bear interest at the rate of six (6) per cent. per annum, payable semi-annually on the first days of April and October of each year until the principal is paid, and issued under the trust agreement hereinafter referred to, and also authorizing applicant to apply to the purposes herein specified the proceeds derived from the issue of the bonds authorized by this Commission's order in Application No. 51, in so far as not necessary for the purposes specified in said order, and a public hearing having been held upon

1112. OF STOCKTON TERMINAL AND EASTERN R. R. CO. 333

said application and the Commission finding that the money to be secured by the issue of said bonds is necessary to and reasonably required by said company for the acquisition of property, the construction, completion, extension and improvement of its facilities, and the improvement and maintenance of its service and that said purposes are not in whole or in part properly chargeable to operating expenses or to income,

*It is hereby ordered as follows:*

1. Stockton Terminal and Eastern Railroad Company is hereby authorized to issue one hundred and twenty-one thousand (\$121,000) dollars, face value, or so much thereof as may be necessary for the purposes hereinafter specified, of principal of first mortgage bonds of said company, maturing the first day of April, 1941, unless sooner redeemed, to bear interest at six (6) per cent. per annum, payable semi-annually, under and in pursuance of the terms of the deed of trust or mortgage heretofore and on the first day of April, 1911, made and executed by said Stockton Terminal and Eastern Railroad Company to Mercantile Trust Company of San Francisco, as trustee, upon the following conditions and not otherwise, to wit:

(a) Stockton Terminal and Eastern Railroad Company shall sell the bonds hereby authorized so as to net the said company not less than eighty (80) per cent. of the face value of the principal thereof besides interest accrued thereon.

(b) The proceeds from the sale of said bonds shall be used for the following purposes only:

(1) For the extension of said company's line of railway from its present terminus in Stockton to Stockton Channel, the proceeds from bonds not to exceed the face value of \$90,000.

(2) For the purchase of one steam locomotive and one motor car, the proceeds from bonds not to exceed the face value of \$31,000.

2. Stockton Terminal and Eastern Railroad Company is hereby authorized to pledge as many of its first mortgage bonds as may be necessary, at the ratio of not to exceed

\$2.00 in bonds to \$1.00 of funds borrowed, to secure the amount of ninety-seven thousand (\$97,000) dollars or so much thereof as may not have been secured from the sale of the bonds authorized in section one (1) hereof, said funds to be used solely for the purposes specified in section one (1) hereof. The authority herein given is alternative with and not in addition to the authority conferred in section one (1) hereof.

3. Stockton Terminal and Eastern Railroad Company is hereby authorized to issue thirty thousand (\$30,000) dollars, face value of principal of its collateral gold bonds maturing the first day of April, 1941, unless sooner redeemed, to bear interest at six (6) per cent. per annum, payable semi-annually, under and in pursuance of the terms of the trust agreement, heretofore and on the first day of April, 1911, made and executed by said Stockton Terminal and Eastern Railroad Company to Mercantile Trust Company of San Francisco, as trustee, to be secured by first mortgage bonds in an amount not to exceed \$1.50 of first mortgage bonds to secure \$1.00 face value of collateral bonds, upon the following conditions and not otherwise, to wit:

(a) Stockton Terminal and Eastern Railroad Company shall sell the bonds hereby authorized so as to net the said company not less than eighty (80) per cent. of the face value of the principal thereof besides interest accrued thereon.

(b) The proceeds from the sale of said bonds shall be used only for the purposes specified in section one (1) hereof.

(c) The authority herein given is alternative with and not in addition to the authority conferred in sections one (1) and two (2) hereof, the intention being that in no event shall the moneys used for the purposes specified in section one (1) hereof exceed the sum of \$72,000 for extending said company's line of railroad to Stockton Channel and \$25,000 for purchasing a steam locomotive and a motor car.

4. Stockton Terminal and Eastern Railroad Company is hereby authorized to issue two hundred and twenty-four thousand (\$224,000) dollars, face value, or so much thereof as may be necessary, of its said first mortgage bonds, upon the following conditions and not otherwise, to wit:

(a) Stockton Terminal and Eastern Railroad Company shall sell the bonds hereby authorized so as to net the said company not less than eighty (80) per cent. of the face value of the principal thereof, besides interest accrued thereon.

(b) The proceeds from the sale of said bonds shall be used for the following purposes only:

(1) For improvements on said company's line of railway from Stockton to Bellota, as specified in Mr. R. A. Thompson's estimate appearing in the opinion herein, and excluding the one steam locomotive and the one motor car, the proceeds from bonds not to exceed the sum of \$45,000.

(2) For the extension of said company's line of railway from Bellota to Jenny Lind, as specified in Mr. R. A. Thompson's said estimate, the proceeds from bonds not to exceed the sum of \$179,000.

(c) None of the bonds in this section authorized shall be issued until Stockton Terminal and Eastern Railroad Company shall have presented to the Railroad Commission evidence satisfactory to the Commission to the effect that said company has entered into a binding contract or contracts for the sale of all the first mortgage bonds in this order authorized to be issued, including those which may be pledged as collateral security, so that the Railroad Commission may be satisfied that said company can secure from the sale of its said bonds funds sufficient for all the purposes in this order authorized.

5. Stockton Terminal and Eastern Railroad Company shall keep separate, true, and accurate accounts, showing the receipt and application in detail of the proceeds of the sale or disposal of the bonds hereby authorized to be issued and on or before the twenty-fifth day of each month the company shall make a verified report to this Commission stating the sale or other disposition of such bonds during the preceding month, the terms and conditions of such sale or other disposition, the moneys realized therefrom and the use and application of said moneys, all in accordance with this Commission's General Order No. 24\* which, in so far as applicable, is made a part of this order.

\*Printed in Commission Leaflet No. 9, at page 82.—Ed.

6. The effectiveness of this order is conditioned on the prior payment of the fee specified in section 57 of the Public Utilities Act.

7. The authority hereby given to issue bonds shall apply only to bonds issued on or before the first day of April, 1914. If any of the bonds hereby authorized to be issued have not been issued by said time, application may be made to the Commission for an extension of said time.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 20th day of March, 1913.

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IN THE MATTER OF THE APPLICATION OF JAMES A. MURRAY AND ED FLETCHER FOR AN ORDER AUTHORIZING AND PERMITTING AN INCREASE IN THE RENTALS, TOLLS AND CHARGES FOR WATER FURNISHED BY THEM AND SERVICE RENDERED BY THEM IN FURNISHING WATER IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA.

Application No. 118—Decision No. 536.

*Decided March 28, 1913.*

Applicants, owning and operating a water system, petition for permission to increase rates. The system was constructed by San Diego Flume Company about 1889, and is capable of yielding 256 miner's inches of water at the head of the flume. The flume company, however, entered into contracts for the delivery of 473.09 miner's inches of which 49.385 inches are being supplied to urban users in the town of La Mesa and the city of East San Diego, the latter municipality having been incorporated since the hearing herein. The remainder of the supply is sold under contract at various rates to consumers mainly for irrigation purposes. On February 24, 1891, and upon petition as required by the statute of 1885, the board of supervisors of San Diego County fixed a water rate for said company at \$120 per miner's inch per annum, but the company did not furnish water at this rate, but at a less rate which is provided for in the various contracts. Applicants acquired the system by purchase June 1, 1910, subject to all said contracts, water rights, etc., and assumed to perform all existing contracts to the same extent as their predecessor could be required to perform them. It was stipulated in the record that the question of service, as well as rates, should be decided.

Prior to March 23, 1912, the rental and distribution of water, outside of municipalities, was subject to regulation by county boards of supervisors under provisions of an act of the legislature passed in 1885 pursuant to article XIV of the State Constitution, as adopted 1879, and also pursuant to an amendment to said act passed in 1897 (Statutes of 1897, page 49).

The powers of the board of supervisors were conferred upon the Railroad Commission and enlarged by amendments to the Constitution, adopted in 1911, and the provisions of the Public Utilities Act, effective March 23, 1912.

In opposition to the jurisdiction of the Commission to grant the relief sought, appeared the customers of applicants using water for irrigation purposes under contracts, on the ground that, as to them, action had been taken before the amendment to the Constitution and the passage of the Public Utilities Act which prevented the legislature from exercising its admitted authority in the absence of such action. In other words, that such contracts worked a limitation upon the authority of the Commission.

I. Upon the issue involving the effect upon the power of the Commission to fix rates of a public utility water company of contracts entered into since the adoption of the Constitution of 1879 and before the amendment to the Constitution of 1911 and the passage of the Public Utilities Act in 1912,

*Held:* (1) the Commission has the right to fix the rates which may be charged by the applicants and prevent deviations from such rates, contracts to the contrary notwithstanding, and by reason of the fact that this same question is continually coming up with reference to utilities, other than water companies, a similar conclusion is announced with reference to all utilities. No contract affecting the relationship which exists between a public utility and its patrons, or in any other way affecting the public, is of any effect in the face of this Commission's authority, except this Commission shall approve the same as a rate, which it has a right to do under the Public Utilities Act, providing such action will not bring about discrimination; (2) contracts entered into in good faith between public utilities and their patrons that are not forced or compelled in any way, and are based upon an adequate consideration, should be adopted so far as is consistent with adequate regulation as the basis for the rates for the service performed by the public utility for its patrons. But at any time when changed conditions bring about the necessity of a change in rate, the Commission should exercise its undoubted authority to depart from the conditions of any such contract, however proper such contract might have been in its inception.

The rules laid down by courts of other western states, particularly Arizona and Colorado, and relied upon by protestants herein, regarded as inapplicable to the question of the validity of a water contract under the California Constitution as distinguished from any public utility contract with consumers, not so much because of the inherent difference in the organic or constitutional provisions in these western states, but by reason of the different interpretation placed upon such constitutional provisions by the courts of last resort in these states, but such decisions regarded as bearing on the general question of the power of public utilities to contract and the effect of change of law so as to make such contracts, though lawful when made, unlawful and unenforcible after the state has exercised its powers of regulation. The basis for the holdings given above found



**Power of Government to Control Property Devoted to the Public Use—The Use of Water Is a Public Use—Principle Applicable to Regulation of Other Utilities Applicable Also to Applicants.** The power to fix rates of a public utility is in the nature of the police power. At least it is the power of government to control property devoted to the public use. (*Munn vs. Illinois*, 94 U. S. 113.) Article XIV of the Constitution of this State provides that the use of water is a public use and the decisions on this point to the same effect are so numerous and unanimous, both of the Supreme Court of this State and the Supreme Court of the United States, that it is unnecessary to discuss this further and we proceed upon the theory that the public use, discussed in the *Munn* case, and doctrine announced there, to which that court has consistently adhered up to the present time, is applicable to a water corporation such as the applicants herein, having appropriated water for sale, rental, and distribution, and that the same principle, applicable to the regulation of other utilities, applies with equal force to the regulation of the applicants. (*Fall Brook Irrigation District vs. Bradley*, 164 U. S. 112; *San Diego Land & Town Company vs. National City*, 174 U. S. 739; *Smith vs. Ames*, 164 U. S. 466.)

**Power of Water Companies to Contract—Previous Limitation on Exercise of Said Regulation of Rates—Authority of Boards of Supervisors.** Under article XIV of the State Constitution and the statute of 1885, passed pursuant thereto, and the amendments to this statute, the boards of supervisors were empowered only to fix maximum rates, and until they had fixed such maximum rates the parties are free to contract, and after such maximum rates have been fixed the parties are free to contract within such maximum rates. (*Fresno Canal & Irrigation Company vs. Park*, 129 Cal. 437.)

**Function of Contracts—State May Substitute Rates for Rates Fixed by Contract.** The right of a public utility water corporation to fix a rate by contract is subject to the power of the State to substitute a rate fixed by the properly constituted authorities for the rate agreed upon by contract, and the sole function of contracts between a water company and its consumers is to fix the relationship of the parties before the public authorities shall have acted, and in addition thereto, probably would have the effect, as to the land involved, to "establish its status as land permanently entitled to share in the public use." (*San Diego L. & T. Co. vs. National City*, 74 Fed. 79, and cases cited; *Laning vs. Osborne*, 76 Fed. 319, and cases cited; *Mandel vs. S. D. L. and T. Co.*, 89 Fed. 295; *Boise City L. and L. Co. vs. Clark*, 131 Fed. 415; *Leavitt vs. Lassen Irrigation Co.*, 157 Cal. 82; *Lassen Irrigation Co. vs. Long*, 157 Cal. 94; *Imperial Water Company No. 5 vs. Holabird*, 197 Fed. 4.)

**Impairment of Obligation—Contracts Subordinate to Powers of Government.** It appears sufficiently from what has been stated herein and from the cases herein reviewed that it is not violative of the provision of the Constitution of the United States (article I, section 10) which denies to the states the power to impair the obligation of contracts, for a state to fix a rate which shall apply to a public utility, such as a water company, which conflicts with the rate agreed upon by such utility and its consumers

in a contract valid when made and if this rule can be invoked in reference to a water company, it, of course, can be equally well invoked in the case of any other utility. The rule is well established that contracts are always made subject and subordinate to the powers of government, and such contracts are entered into subject to the full legal effect of this rule, and it is no impairment thereof for the state, in the proper exercise of its authority, to disregard them. (*Stanislaus vs. San Joaquin and K. R. C. Co.*, 192 U. S. 202; *Home Telephone and Telegraph Co. vs. Los Angeles*, 211 U. S. 265; *Legal Tender cases*, 12 Wall. 550; *Louisville and Nashville Railroad Co. vs. Mottley*, 219 U. S. 467.) Contracts such as these are entered into by the parties in full legal contemplation of the power of the State to exercise its authority and, although the State has not exercised its authority, such power to exercise such authority is in effect a condition subsequent as much a part of the contract as though written therein by the parties, and, hence, of course, on the happening of the condition subsequent the effect of the contract, as against the power of the State to regulate, becomes nil.

**Surrender of Government Power—Effect of Statutes—Construction of Amendment of 1897.** A state can not be construed as having surrendered its authority to regulate utilities unless it is made plainly to appear affirmatively that either the State has done this or has empowered a legal subdivision so to do and such legal subdivision has acted. The statutes passed pursuant to article XIV of the Constitution up to 1909 could not be construed to amount to a contract on the part of the State to waive its admitted right to regulate these agencies. (*Crow vs. San Joaquin and K. R. C. and I. Co.*, 130 Cal. 309; *Leavitt vs. Lassen Irrigation Co.*, 157 Cal. 82; *Hildreth vs. Montecito Creek Co.*, 139 Cal. 22; *Stanislaus vs. San Joaquin and K. R. C. Co.*, 192 U. S. 202.) The only language which could possibly be construed to have any bearing upon this subject is that in the amendment to the act of 1885 passed in 1897. Independent of the suggestion of the Supreme Court in the *Leavitt case* that this language is unconstitutional and giving it all of the effect which, as a valid statute, it could have, it goes no further than to say that the act of 1885 does not prohibit or invalidate contracts, but does not, by implication or otherwise, carry with it the inference that that act does validate or sanction contracts. If it has any effect at all, it merely subtracts whatever effectiveness the statutes of 1885 had against these contracts, and leaves the subject in the same condition, with reference to the validity or invalidity of such contracts, as though no statute had been passed at all, and we must rely, as the Supreme Court of this State does in the *Leavitt case*, upon article XIV of the Constitution.

II. Upon the issues involving the jurisdiction of the Commission over rentals and distribution of water delivered to urban users in La Mesa and East San Diego and generally,

*Held:* (1) under section 23, article XII of the Constitution and section 82 of the Public Utilities Act the cities are limited to the power which they possessed on the 23d day of March, 1912, and no extension of this power may be had. The city of East San Diego, not being in existence on this date, is incorporated as a city of the sixth class at a time when such cities are limited to the powers over utilities which they had vested in them on the 23d day of March, 1912, which, of course, as to this city was nil; (2) this Commission has ample authority to fix any charge which any public utility shall make for its commodity and there can

not be found any authority in the Constitution or the statutes of this State for exempting a wholesale rate of a public utility from the jurisdiction of this Commission. Therefore, while admittedly the Commission, under the authority of *McFadden vs. Los Angeles* (74 Cal. 571), has no authority to fix the rate which the La Mesa Mutual Water Company shall charge to its stockholders, if it is in fact a mutual company, yet this does not at all affect the power of the Commission to regulate the relationship which exists between this corporation as a consumer of water and the public utility which furnishes the same; (3) all of the rates and all of the conditions of service of the applicants are properly subject to the jurisdiction of this Commission.

III. Upon the question of rates, consideration given to the general principles established in *Lexington Turnpike vs. Sanford*, 164 U. S. 578; *Osborne vs. San Diego Land and Town Company*, 178 U. S. 962; *San Diego Land and Town Company vs. Jasper*, 189 U. S. 439; *Stanislaus vs. San Joaquin and Kings River Canal and Irrigation Company*, 192 U. S. 202; *Knoxville Water Company*, 212 U. S. 1, and *Willcox vs. Consolidated Gas Company*, 212 U. S. 19.

The doctrine which results from these cases is that the present fair value of the property being used by a public utility for the convenience of the public is the basis upon which rates are to be fixed, and in the *Ames* case it is held that original cost of construction, the amount expended in permanent improvements, the amount and market value of stocks and bonds, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates and the sum required to meet operating expenses, are all matters for consideration "and are to be given such weight as may be just and right in each case." The *Jasper* case also in addition to this, holds that the price at which a plant has been bought at a foreclosure sale is evidence to be considered in a rate fixing inquiry.

*Held:* In order for rates of a public utility to be just to such utility, they should be sufficient, after caring for cost of operation, maintenance, and depreciation, to yield a reasonable return upon the present fair value of the property devoted to the public use. The nearest and fairest approximation which may be made to a correct "value" upon which a public utility shall be allowed to earn is the amount of the investment wisely made and this view is not at all in conflict with the position of the courts in this regard. The elements which we have been directed to consider may all well be secondary evidence of this ultimate fact. However this may be, this Commission in every rate fixing inquiry should give careful consideration to each of the elements prescribed and should give that weight to each in each case to which we conscientiously think in that case it is entitled with the hope that thereby we may arrive at such fair value of the property devoted to the public use as is just and fair to the utility and at the same time not oppressive to the consumer.

IV. Upon the question of service, the Commission found as a fact that applicants have a supply of water in their control devoted to public use adequate to furnish all the necessary demands of those for whose benefit such public use was created, but that, by reason of inadequate facilities, applicants are wasting said water and are not properly or adequately supplying the demands of their consumers; that the facilities for furnishing a

supply of water to such consumers and the supply of water available under the present condition of the system is inadequate, insufficient, unjust and unreasonable; that an increase of the net safe yield of the system at least 33½ per cent. over its present safe supply is necessary to render its facilities and service adequate, sufficient, just and reasonable. Basing its order upon said findings, applicant is directed, without delay, to construct a closed flume in lieu of the one used and to take steps to increase, by 33½ per cent., the available supply of water.

Applicants having contended that they are only required to furnish to their consumers gravity water, basing such contention mainly upon the contracts,

*Held:* Such contention is not correct. Applicants have a certain amount of water in their control at the present time largely in excess of the amount which, with reasonable losses, can be devoted to beneficial use. Their only warrant to the control of this water is that they devote it to beneficial use, and whether they deliver it to consumers as it runs down from the natural flow or withhold it in impounding reservoirs either above or below its consumers, their present warrant for its reservation is that they supply their present consumers and they certainly had no right to withhold it at this date because they expect to serve other consumers below the La Mesa reservoir, because those other consumers under the law are not yet admitted into the class for which this use is created. (See *Tyndale Palmer vs. Southern California Mountain Water Company*, decided January 21, 1913, and authorities therein cited.) They not only must use every endeavor to apportion this water ratable to the consumers in times of scarcity (*Leavitt vs. Lassen*, *supra*), but under the present condition of the system they must not admit any more consumers to the class for which the use is created, except such consumers be domestic consumers, within the territory already described which has been held as beneficiary of the public use, and in such territory they must only add domestic consumers up to the minimum safe yield represented by the number of inches of water attributable to such territory.

Application granted upon findings of fact, summarized in the order, respecting the fair value of the property, reasonable cost of operation and maintenance, reasonable allowance for depreciation and fair return upon the investment.\*

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\*Syllabus prepared by Commission.—Ed.

Board of Railroad Commissioners.

PETITION OF THE BOSTON AND MAINE RAILROAD FOR APPROVAL  
OF AN ISSUE OF ADDITIONAL COMMON STOCK.\*

No. 9083.

*Decided February 7, 1913.*

Authorization of Stock—Acquisition of Stock of Leased Lines—Capitalization of Premium on Stock—Public Policy.

This was a petition by the Boston and Maine Railroad for approval of an issue of 106,637 shares of common stock at par, for the purpose of providing funds for the payment of moneys borrowed and used in the purchase of the capital stock of certain railroads leased to, and operated by it. It appeared that the capital stock so purchased had been acquired at prices considerably above par, and that these purchases had from time to time been approved by the Board.

*Held:* That the capitalization of the premium value of the capital stock of the leased roads would be clearly at variance with the policy of the commonwealth, and the fact that the increased capitalization was reached through the medium of Boston and Maine stock would not change the essential character of the transaction so far as the public is concerned, since, by the capitalization of such artificial values, the burden of excessive rentals would be transferred from the stockholders of the Boston and Maine Railroad to the public.

*Held, further:* That although the Board's approval of the purchases of the stock of the leased lines did not imply that the entire purchase price was properly subject to capitalization, nevertheless the company might have been justified in assuming that an issue of capital stock sufficient to cover the expenditure would be approved.

*It was ordered, therefore,* That the issuance of 106,637 shares of Boston and Maine stock be approved in this instance, upon the understanding that this order does not constitute a finding as to the value of any railroad properties, which can affect the action of the Board in any future case concerning the rates or value of the Boston and Maine Railroad or of the railroads involved herein.†

OPINION AND ORDER.

This is a petition for approval of additional common stock to the amount of 106,637 shares, which the petitioner de-

\*The report of the New Hampshire Public Service Commission, dated February 11, 1913, approving this issue of stock, is printed in Commission Leaflet No. 17, at page 823.—Ed.

†Editor's headnote.

sires to issue at par for the purpose of providing means for the payment of money borrowed for the purchase of the capital stock of the Worcester, Nashua and Rochester Railroad Company, the Maine Central Railroad Company, the Boston and Lowell Railroad Corporation and the Concord and Montreal Railroad, acquired under the provisions of chapter 194 of the acts of 1898.

We find that the number of shares purchased of the stock of each of the said railroad corporations and the amounts expended therefor, together with the dates of purchase, are as follows:

	SHARES	AMOUNTS
Worcester, Nashua and Rochester Railroad Co. February, 1910, to June, 1912.....	30,984	\$4,770,098.95
Maine Central Railroad Company. October 1, 1911, to October 1, 1912.....	50,449	5,047,996.00
Boston and Lowell Railroad Corporation. August, 1911 .....	2,800	617,448.41
Concord and Montreal Railroad. April, 1912....	3,335	533,600.00
<b>TOTAL .....</b>		<b>\$10,969,143.36</b>

In February, 1910, 16,944 shares, representing a controlling interest of the stock of the Worcester, Nashua and Rochester Railroad Company, were purchased by the Boston and Maine Railroad at \$160.25 per share. By an order of the Board dated March 22, 1910, the approval of the Board was given to the purchase and holding by the Boston and Maine Railroad of the capital stock, or at least a majority thereof, of the Worcester, Nashua and Rochester Railroad Company. At the time this order was issued the Board was advised of the purchase price paid by the Boston and Maine Railroad for the controlling interest in the stock of the Worcester, Nashua and Rochester Railroad Company. Although this price was slightly in excess of the market quotations for small amounts of this stock, the Board informally approved the same, in view of an appraisal of the property of the Worcester, Nashua and Rochester Railroad Company made on behalf of the Board by Mr. G. M. Thompson, civil engineer. Subsequent purchases of the stock of the Worcester, Nashua and Rochester Railroad Company by the Boston and Maine Railroad reduced the average price paid for all

the stock in that company purchased by the Boston and Maine Railroad to \$153.95 per share.

By another order of the Board dated April 17, 1911, the approval of the Board was given to the purchase and holding by the Boston and Maine Railroad of the capital stock, or at least a majority of the capital stock, of certain railroad corporations, including the Maine Central Railroad Company, the Boston and Lowell Railroad Corporation and the Concord and Montreal Railroad.

Of the 50,449 shares of stock of the Maine Central Railroad Company purchased by the Boston and Maine Railroad, 50,363 shares were subscribed for at \$100.00 per share, and 86 shares (held in the treasury of the Maine Central Railroad Company) were purchased in 1911 at \$136.00 per share, making the average cost of the 50,449 shares of the Maine Central Railroad Company \$100.06 per share. The market quotations on Maine Central Railroad stock in July and August, 1911, were from \$140.00 to \$145.00 per share.

The 2800 shares of stock of the Boston and Lowell Railroad Corporation were purchased at auction at an average price of \$220.51 per share.

Under the vote of the stockholders and directors of the Concord and Montreal Railroad Company authorizing the issue of 4000 shares Class 4 stock, the stockholders subscribed and paid for 257 shares at \$160 per share. After the date when the right to subscribe expired, 408 shares were sold and paid for at the same price, making a total of 665 shares, and leaving a balance in the treasury of 3,335 shares, which were sold at auction for \$160 per share and purchased by the Boston and Maine Railroad.

It thus appears that the stock of all of the said corporations, with the exception of the Maine Central Railroad Company, was purchased at a price considerably above par. If the amount of this purchase price is to be provided by the issue of stock of the Boston and Maine Railroad at par, the result will be to increase largely the aggregate outstanding capitalization of the Boston and Maine Railroad system. If the various leased railroad companies attempted to capitalize the premium value of their own capital stock, it would

be clearly at variance with the general policy of the commonwealth. The fact that the increased capitalization is made through the medium of the Boston and Maine stock does not change its essential character so far as the public is concerned.

It is to be borne in mind also that this transaction goes farther than the capitalization of premiums on the stock, based upon the earning capacity of these leased lines. Whatever amount of capital may have been put into these properties, and whatever their physical values may be at the present time, the market value of their stock does not reflect these values, or the present earning capacity of these lines, but is fixed almost solely on the basis of the rentals paid by the Boston and Maine Railroad. The higher these rentals are the higher will be the market value of the stock of the leased lines, no matter what may be the net financial result of their operations.

As the market price of the shares of stock of these subsidiary lines is not determined by their earning capacity or intrinsic values, it has been exceedingly difficult for the Board to apply any satisfactory standard for determining the proper ratio of exchange between the stock of the Boston and Maine Railroad and that of the subsidiary lines. A careful physical valuation of the property of these lines, and an investigation of the aggregate amounts of capital contributed by their stockholders, would necessitate a long and unwarranted delay, and would not be conclusive in regard to the questions of policy involved.

Attention should also be called to an important phase of this case. If an excessive rental is being paid by the Boston and Maine Railroad for any of its leased lines, the burden rests, as it should, upon the stockholders of the Boston and Maine Railroad; but if the artificial value thus given to the stock of any such leased line is to be capitalized, that burden is transferred to the public. The rentals heretofore paid to the Worcester, Nashua and Rochester Railroad Company, the Boston and Lowell Railroad Corporation and the Concord and Montreal Railroad are equivalent to about three and three-quarters per cent. upon the purchase price paid for



their stock. If this purchase price should be provided by the issue of stock of the Boston and Maine Railroad at par, the public, in any cases affecting the adjudication of rates, would be asked to pay sufficient rates to permit dividends of at least six per cent. instead of three and three-quarters per cent., as heretofore, upon this amount.

In the original act, chapter 408 of the Acts of 1891, giving the Boston and Maine Railroad authority to purchase the road, franchises and property of any railroad corporation whose road is operated by it under lease, contract, or through ownership of stock, it was specified that the Boston and Maine Railroad, for the purpose of making any such purchase, might increase its capital stock by an amount not exceeding the amount of the capital stock of the selling corporation. In a later act, chapter 194 of the Acts of 1898, the Boston and Maine Railroad was given the general authority, subject to the approval of the Board of Railroad Commissioners, to purchase the shares of the capital stock of any such railroad corporation and, in order to provide the means for such purchase, to issue its own shares "subject to the approval of the Board of Railroad Commissioners as to the amount and to the provisions of all general laws relating to the issue and disposal of new shares of stock of railroad corporations."

As the avowed purpose of this legislation was to enable the Boston and Maine Railroad to purchase the stock of the Boston and Lowell Railroad Corporation, as well as the stock of other lines then selling at a higher price than the stock of the Boston and Maine, it was clearly the intent of the legislature to repeal the limitation in the act of 1891, and to authorize the issue of stock of the Boston and Maine Railroad in excess of the amount of stock of the selling corporation. The responsibility of determining how far this policy should be carried was, however, left with the Board of Railroad Commissioners.

Moreover, at the time this act was passed, the market quotations for the stock of the Boston and Maine Railroad were about \$165.00 a share. In other words, at that time four shares of stock of the Boston and Maine Railroad would provide for the purchase of three shares of stock of the Boston

and Lowell Railroad Corporation. It is not clear that the legislature anticipated that the price of the stock of the Boston and Maine Railroad would fall so low as to require the issue of eleven shares of that stock in order to purchase five shares of stock of the Boston and Lowell Railroad Corporation.

On the other hand, the Board recognizes that the elimination of fixed charges due to rentals of leased lines, and a more equal distribution of dividends among all the stockholders of the Boston and Maine system is, within proper limitations, in the interest of the public. The Board has also in mind that any increase of capitalization for the purchases now under consideration would be more than offset by the decrease of capitalization due to purchases of the stock of other leased lines heretofore made at a price much below par. Moreover, while the approval heretofore given by the Board for the purchase of the stock of these leased lines does not imply that the entire amount of the expenditures for such purpose are properly subject to capitalization, the company, in the absence of any declared policy by the Board, might have been justified in assuming that the Board would authorize an issue of capital stock of the Boston and Maine Railroad sufficient to meet the expenditures so incurred with the approval of the Board.

As the result of careful investigation and consideration of all the important questions of policy involved in the present case, the Board is prepared to approve the issue by the Boston and Maine Railroad of 106,637 shares of stock as prayed for in the petition. In so doing, however, the Board desires it to be distinctly understood that this action is not to be regarded as establishing a precedent in relation to similar purchases of stock hereafter made and that the Board reserves the right to take such action in relation thereto as may seem to the Board, in view of all the circumstances of each case, to be just and proper.

*It is therefore ordered.* That the approval of the Board be hereby given to the issue by the Boston and Maine Railroad, at the price of one hundred dollars (\$100) per share, as fixed by its stockholders, of additional shares of common stock

not exceeding one hundred six thousand six hundred thirty-seven (106,637) in number, amounting at par value to ten million six hundred sixty-three thousand seven hundred dollars (\$10,663,700), as an issue of stock reasonably necessary and of the amount required for the purpose of providing means to be applied towards the payment of money borrowed for the purchase of the capital stock of the Worcester, Nashua and Rochester Railroad Company, the Maine Central Railroad Company, the Boston and Lowell Railroad Corporation and the Concord and Montreal Railroad, acquired under the provisions of chapter 194 of the Acts of Massachusetts of 1898, as shown in the schedule filed with the petition.

This order is made on the understanding that it does not constitute a finding as to the value of any railroad properties which can in any way affect the action of the Board in any case concerning rates upon the Boston and Maine Railroad, or in any other matter that may arise in the future wherein the value of the property of any of the railroad companies named in this petition may be material.

## NEW YORK.

### Public Service Commission—Second District.

#### IN THE MATTER OF THE COMPLAINT OF LOUIS P. FUHRMANN AS MAYOR OF THE CITY OF BUFFALO AGAINST THE CATARACT POWER AND CONDUIT COMPANY.

No. 154.

*Decided April 2, 1913.*

#### Reduction of Rates—Capitalization of Contract—Valuation of Property— “Going Concern” Value—Depreciation—Amortization within Life of Franchise.

The Cataract Power and Conduit Company sells electric energy in the City of Buffalo. It purchases this energy from The Niagara Falls Power Company, the price paid being \$16 each electric horsepower delivered at the northerly line of the City. The mayor of the City made complaint that the prices charged by said company were unjust and unreasonable. After answer and hearing, the prices charged, with the exception of that for energy sold to the International Railway Company, are reduced 28 per cent. without change in form of the sliding scales used by the company in its schedules.

The opinion contains discussion of the following subjects:

(a) Has the contract of the respondent with The Niagara Falls Power Company for the purchase of electric energy at \$16 per horsepower, a property or capitalizable value upon which it is entitled to a return?

(b) Fair value of property used in the public service: what it is and how arrived at.

(c) “Going concern” value: whether it is a property right entitled to such a return.

(d) Depreciation.

(e) Amortization of the depreciable property of the company, its franchise terminating in twenty years.

#### APPEARANCES:

*Clark H. Hammond*, Corporation Counsel, *Harry D. Sanders*, Assistant City Attorney, for complainant.

*Kenefick, Cooke, Mitchell & Bass*, for respondent.

#### OPINION.

**STEVENS, Chairman:**

The Cataract Power and Conduit Company was incorporated the 18th day of June, 1896, pursuant to the provisions of the Transportation Corporations Law. Shortly

City of Buffalo for the distribution of electric energy, chiefly for power purposes and incidentally and to a small extent for lighting purposes. It has been engaged in that business from about 1897 down to the present time. The City of Buffalo through its mayor makes complaint that the rates charged by this company for electric energy are unreasonable and unjust and asks that such rates be fixed at a reasonable and just amount. The company denies that its present rates are unreasonable or unjust. Upon the issues joined by the complaint and answer, hearings have been had and evidence has been submitted by both parties, and the case has been submitted upon voluminous briefs.

The importance of the controversy and its magnitude demand a careful study of the history of the company and its operations. No proper disposition of the case can be made without a full understanding of the manner in which the company was organized and its subsequent financial operations.

On the 2nd day of December, 1895, the common council of the City of Buffalo adopted an ordinance which was approved by the mayor on the 16th day of December, in and by which there was granted to The Niagara Falls Power Company the right to erect poles, string wires and cables, and to lay conduits in the streets of the City of Buffalo for the purpose of transmitting electricity. This grant was accepted by The Niagara Falls Power Company on the 14th day of January, 1896, and on the same day a written acceptance was filed with the city clerk of the City of Buffalo, and thereupon the said franchise became effective. On the 1st day of July, 1896, The Niagara Falls Power Company assigned the said grant to The Cataract Power and Conduit Company.

On the 1st day of June, 1896, The Niagara Falls Power Company entered into an agreement with Franklin D. Locke in and by which it agreed to deliver to the said Locke a stipulated amount of electric horsepower at a price named in the agreement, the delivery of such electric horsepower to be made at the northerly line of the City of Buffalo. At a meeting of the board of directors of The Cataract Power

and Conduit Company held on the 1st day of July, 1896, the company accepted from said Locke an assignment of the said agreement with The Niagara Falls Power Company, and also an assignment from said The Niagara Falls Power Company of its license to occupy state canal lands for a transmission line within the City of Buffalo. In consideration of the assignment by The Niagara Falls Power Company of the franchise from the City of Buffalo and the license from the State, and of the assignment by Locke of the contract with The Niagara Falls Power Company, The Cataract Power and Conduit Company issued to them the full authorized amount of its capital stock, namely 20,000 shares of the par value of \$2,000,000. Of this amount there were issued to The Niagara Falls Power Company 10,050 shares of the par value of \$1,005,000, and to Locke 9,950 shares of the par value of \$995,000. In this transaction Locke appears to have been acting for individuals other than himself, and accordingly the stock was not issued directly to him but to persons apparently for whom he was the representative. It is unnecessary at this time to go into the transaction in further detail. The point to the whole matter is, that none of the stock of the Cataract company was issued for cash and that the sole consideration for its issue was as above stated.

Upon the hearings, both the oral and the documentary evidence of the City and the respondent were chiefly directed to the question of the reproduction cost new of the physical property of the company. The respondent gave some evidence tending to show the commercial value, as it terms it, of its property. It was, of course, impossible for the City to give any direct evidence as to the actual cost of the property, or in other words the cash investment made by the company in its plant. After the case had proceeded to such a point that it was clear the respondent did not intend to pursue the inquiry in that direction, the Commission on its own motion ordered an investigation to be made by its examiners into such actual cost as shown upon the books of the company. An exhaustive examination was made of the books and vouchers of the company during the period of its existence. A voluminous report was made

to both the City and the respondent; and after some period was allowed for examination of the same, the report was introduced in evidence as a part of the record in the case. The City has chosen to make no comments thereon. The respondent has made such comments thereon as it deemed proper.

Substantially, there is no criticism upon the examiner's report as to the cash investment in the physical property of the company except upon one point which will be discussed later.

The following is a summary of the fixed capital owned by the respondent and in service December 31, 1911, as shown in the examiner's report:

ACCOUNTS	AMOUNTS			
Real estate .....	\$54,601.45			
General structures .....	6,630.35			
Buildings .....	127,026.82			
Sub-station buildings .....	1,490.84			
Station equipment .....	487,076.98			
Sub-station equipment .....	140,630.43			
Transmission line .....	46,592.24			
Cable .....	448,848.53			
Transmission system .....	58,897.09			
Distribution system, other underground.....	17,076.15			
Conduit .....	120,573.38			
Canadian conduit .....	2,766.54			
Manholes .....	26,809.96			
Underground conduit .....	21,994.66			
Overhead construction .....	65,535.81			
Electric services .....	8,131.23			
Distribution system, overhead.....	45,418.85			
Poles and fixtures.....	13,923.71			
Transmission tower .....	21,019.13			
Niagara River span.....	16,927.60			
Transformers .....	5,409.44			
Line transformers and devices.....	13,464.69			
Meters .....	29,266.93			
Electric meters .....	15,951.06			
Electric meter installation.....	1,177.09			
Electric instruments .....	619.18			
Electric tools and implements.....	660.62			
Electrical laboratory equipment.....	1,792.97			
Office furniture and fixtures.....	629.22			
General equipment .....	13,360.14			
General construction .....	20,762.83			
Preliminary expenses .....	28,810.25			
DEFICIT DURING CONSTRUCTION:				
Balance June 30, 1899.....	\$36,411.95			
Expenses applicable to period of construction, charged to profit and loss in subsequent period.				
1898 .....	\$72.75			
1899 .....	5,555.89	5,628.64	42,040.59	
TOTAL .....			\$1,905,916.76	



In connection with the foregoing summary, it is proper to observe that the examiner's report gives full detail of quantities and prices used in reaching the foregoing summaries of the several ledger accounts, the property on hand being taken to be that enumerated in the inventory introduced in evidence by the respondent.

It is important to observe at what amount the fixed capital of the company is carried upon its books. In its annual report to this Commission for the year ended December 31, 1911, following the classification required by the Uniform System of Accounts for Electrical Corporations prescribed by this Commission, the company states that its fixed capital on the 31st day of December, 1908, was \$3,416,251.93; and that the fixed capital installed by it since December 31, 1908, down to December 31, 1911, amounts to \$360,599.88; thus making a total fixed capital of \$3,776,851.81.

Its analysis of its fixed capital December 31, 1908, given in the same report, is as follows:

Real estate .....	\$54,601.45
Buildings .....	120,541.73
Station equipment .....	489,247.36
Cable .....	448,848.53
Conduit .....	135,047.25
Manholes .....	26,809.96
Transmission line .....	46,592.24
Transmission tower .....	21,019.15
Niagara River crossing .....	16,927.60
Overhead construction .....	72,286.45
Canadian conduit .....	2,766.54
Transformers on line .....	6,390.87
Meters .....	34,928.96
Electrical instruments .....	619.18
Office furniture and fixtures .....	629.22
General construction .....	16,210.21
Preliminary expenses .....	28,810.25
	<hr/>
	\$1,522,276.93
Less, to equalize the investment of Amortization account of January 1, 1909, with the Accrued Amortization of Capital at that date .....	106,025.00
	<hr/>
	\$1,416,251.93
Contracts, licenses, etc.....	2,000,000.00
	<hr/>
	\$3,416,251.93

It will be seen from the foregoing that on the 31st day of December, 1908, its books showed the actual cost of its fixed capital to be the sum of \$1,522,276.93, and that the sum of \$106,025 deducted therefrom was merely an accounting entry designed to transfer a part of the fixed capital to the account Accrued Amortization of Capital. It will be further noted that the sum of \$2,000,000, which is the amount of its capital stock, is frankly set forth as the cost of "Contracts, licenses, etc.," referring thereby clearly and unmistakably to the consideration hereinbefore detailed for the issue of the capital stock.

By restoring the sum of \$106,025 to Fixed Capital account, it will be seen that the company was, December 31, 1911 (the point agreed upon in this case from which all matters should date), carrying its fixed capital on its books at a cost of \$1,882,876.81, while the examiner reports the total of such actual cost as \$1,905,916.76, an excess in the amount reported by the examiner over that appearing upon the company's books of \$23,039.95. This difference arises from the fact that the examiner deducted from the accounts of the company as improper charges to fixed capital the sum of \$19,000.64, and added thereto the sum of \$42,040.59, being practically the amount of deficit during construction which had occurred up to the 30th day of June, 1899. Whether or not this deduction and addition made by the examiner were warranted is a matter of but very little consequence, since the discrepancy in the totals shown by the books of the company and the report of the examiner is too small to affect in any substantial way the decision of this case.

It may be fairly assumed that the cost of the physical property of the company was, exclusive of matters to be hereinafter discussed, the sum reported by the examiner, namely \$1,905,916.76.

This fixed capital does not represent the entire tangible property used by the respondent in the public service. It appears undisputedly in the evidence, that on December 31, 1911, it had in process certain construction not yet completed upon which there had been expended \$106,181.68,

and these book orders in process, as they may be termed, are a part of the property of respondent in the service of the public upon which it is entitled to a return. On the same day it also had on hand materials and supplies of an appraised value of \$40,180.08. These are also a part of its property to be considered in this case. In addition to the foregoing, it has a certain amount of working capital upon which it should be allowed a return, the amount of which however is in dispute and will require further discussion.

The sum of the foregoing matters, exclusive of working capital, is as follows:

Cost of fixed capital.....	\$1,905,916.76
Book orders in process.....	106,181.68
Materials and supplies.....	40,180.08
<b>TOTAL .....</b>	<b>\$2,052,278.52</b>

In order to ascertain precisely what matters are in controversy in this case, it is next proper to state the claim made by the company as to the value of its property used in the public service upon which it is entitled to a return. It fixes this amount in several ways. So far as the tangible property is concerned, it calls attention to three results, as they may be termed, from which such value may be determined: namely, the commercial value to be determined by the market value of its stock and bonds; the net earnings value arrived at by capitalizing its net earnings for a given year; and its reproduction value new, plus going concern value and the claimed value of its contract for the supply of energy with The Niagara Falls Power Company.

Confining our attention to the reproduction value theory, we find it is claimed to be as follows:

Cost of reproducing physical property new.....	\$3,504,008
Value of contract with The Niagara Falls Power Co.....	2,000,000
Going value .....	300,000
Other items .....	184,905
<b>TOTAL VALUE .....</b>	<b>\$5,988,913</b>

It is difficult to reproduce in detail the claim made by the City as to the value of respondent's property in service, nor indeed is it essential so to do at this time. As we understand it, such amount is something under \$2,000,000.

Without going into further detail, it will be seen that there is practically a difference of \$4,000,000 involved in the controversy as to the value of the property in service, and this with no substantial dispute as to what the property is. Before entering into an inquiry as to what constitutes such a tremendous difference in estimates of value, attention should be called to the general financial condition of the company. The following is its condensed balance sheet as of December 31, 1911, taken from its annual report to this Commission for that year:

#### ASSETS SIDE:

Fixed capital December 31, 1908.....	\$3,416,251.93	
Fixed capital installed since December 31; 1908....	360,599.88	
		<hr/> \$3,776,851.81
Current assets:		
Cash .....	\$ 355,543.31	
Accounts receivable system corporations.....	91.34	
Other accounts receivable.....	219,508.96	
Interest and dividends receivable.....	2,005.25	
		<hr/> 577,148.86
Materials and supplies.....		\$40,180.08
Miscellaneous investments:		
Free investments .....	\$840.00	
Other investments .....	210,000.00	
		<hr/> 210,840.00
Miscellaneous temporary debits:		
Special deposits .....	\$64,875.00	
Prepayments .....	7,025.12	
Other suspense (work in process).....	109,346.89	
		<hr/> 181,247.01
<b>TOTAL .....</b>		<hr/> <b>\$4,786,267.76</b>

Stock .....	\$2,000,000.00
Funded debt, mortgage bonds.....	1,384,000.00
Unfunded debt:	
Taxes accrued .....	\$42,020.08
Interest accrued on funded debt.....	34,875.00
Dividends declared .....	30,000.00
Consumers' deposits .....	650.00
Owing system corporations.....	8,333.33
Accounts payable .....	52,760.54
	<hr/>
	168,638.95
Reserves:	
Accrued amortization of capital.....	486,499.16
Corporate surplus .....	747,129.65
	<hr/>
TOTAL .....	\$4,786,267.76

The examiner in his report rearranges this balance sheet to a material extent, but it is not necessary to insert the rearranged balance sheet at this point. Later on it may become essential to an understanding of some of the questions involved.

The material points to which attention should be called as shown by the foregoing balance sheet are as follows:

First, the funded indebtedness is shown to be \$1,384,000, being the amount of its bonds outstanding. The report of the company to the Commission states that the cash actually realized for these bonds was \$1,376,150, showing that they were disposed of at almost par. Thus we find that the existing property of the company was constructed from the proceeds of these bonds and from earnings from operation, no cash or property whatsoever having been obtained by the issue of stock except as hereinbefore detailed. We also observe that the corporate surplus is \$747,129.65.

#### VALUE OF THE CONTRACT FOR POWER WITH THE NIAGARA FALLS POWER COMPANY.

As above shown, the respondent is the owner of the contract of June 1, 1896, between Franklin D. Locke and The Niagara Falls Power Company. This contract has been supplemented by various subsequent contracts modifying or qualifying to some extent the provisions of the original con-

tract. It is unnecessary to set forth all the details of any of these contracts. It will be sufficient to accept for the purposes of the discussion the statement made by respondent in its own words, contained in the brief of its counsel:

Under these contracts, therefore, The Niagara Falls Power Company is required to furnish to the Cataract company at its stations in Buffalo for over a thousand years at least 37,500 horsepower at the rate of \$16 per horsepower per annum.

It will be best to state the contention of the company regarding the value of this contract and its supplements in its own words, contained in the brief of its counsel:

The only questions fairly to be considered are: (a) Has the contract any value? (b) If so, what is the proper method of arriving at its value? and (c) should that value or any part thereof be included in the fair value of the entire property of the company as a basis for rate making purposes?

With the evidence undisputed in the record that there is a demand on the part of the consumers at Niagara Falls for power at \$20 per horsepower per annum; that the cost of transmitting power to the Buffalo city line is approximately \$4 per horsepower per annum, making a total cost here of \$24 per horsepower per annum, assuming that there were any Falls power available, which is not the fact; with the undisputed testimony in the record that the cost of generating electric power in Buffalo with the most modern steam plant would range from \$25 to \$28 per horsepower per annum, can it reasonably be questioned that this contract, requiring the delivery of 37,500 horsepower at the city line every year during the term of the Cataract's franchise (nineteen years yet to run) and beyond for upward of a thousand years at the rate of \$16 per horsepower has a value? Clearly not. How then should such value be arrived at?

Assuming the market value of hydro-electric power at the Falls at \$20 per horsepower per annum, and assuming \$4 per horsepower per annum as the cost of transmission to the Buffalo city line, we have \$24 per horsepower per annum as the market value of Falls power at the Buffalo city line, assuming there were any available.

Applying the other test as to the cost of generating electric power by a modern steam plant in Buffalo, we have \$25 to \$28 per horsepower as the lowest estimate for the cost of steam generation. It is apparent, therefore, that the only logical way of arriving at the value of this contract is by taking the difference between the cost of power under the contract and the cost of power generated here by steam. The difference is \$9 per horsepower per annum. Multiply this by the 37,500 horsepower which the power company is required to deliver us, and we get the annual saving of \$337,500 per annum. This sum capitalized at 8 per cent. would be over \$4,000,000.

An analysis of the foregoing excerpt from the respondent's brief shows that the facts upon which the company relies to

the extent of \$2,000,000 and upward are as follows:

1. That under the terms of the Locke contract it has a right to have The Niagara Falls Power Company deliver to it in practical perpetuity at the city line of Buffalo each year not less than 37,500 electric horsepower.

2. That it is required to pay for each horsepower delivered to it as aforesaid only the sum of \$16 per annum.

3. That there is no other hydro-electric power available to be delivered in Buffalo at the present time and no prospect that there will be any other in the future; that by reason of this fact it has a practical monopoly of hydro-electric power in that city.

4. That the minimum cost of steam generated electric power in Buffalo at the switchboard is \$25 per horsepower per annum.

5. That the company can sell this power at \$25 in competition with steam generated power, and hence in so selling it there is a clear profit of \$9 per horsepower.

6. That this profit of \$9 per horsepower computed upon the total amount to which it is entitled, 37,500 horsepower, gives an annual profit of \$337,500.

7. That \$337,500 annual profit capitalized at 8 per cent. amounts to \$4,218,750.

It is clear from the foregoing analysis that the alleged value of the contract depends upon whether the company has a vested right to sell its electric energy at switchboard cost of steam generated electric energy plus the cost of distribution, with proper returns upon the capital invested in such distribution. If the company has such a vested right, there is no escape from the argument presented by it. If it has not such a vested right, the argument falls at once.

If this Commission has the right to reduce the selling price to be charged by the company below the assumed cost of steam developed electric energy, to the extent that it so reduces such price, it deprives the contract of its alleged value. If it should reduce the price so as to cut the profit of \$9 in half, it would deprive the contract of one-half of its assumed value. If it should treat the \$16 per horsepower

paid by the company for energy as an operating expense merely, in such case the contract would lose all its alleged value.

Stating the matter in another way, the value of the contract depends upon the price which the company is entitled to receive for the energy which it produces. If it is entitled as a matter of absolute right to receive \$25 per horsepower for that energy, then it is entitled to a clear profit of \$9 per horsepower, and the contract is a property right of great value. If, on the other hand, the company is not entitled as a matter of legal right to charge \$25 per horsepower for this energy, but can be required to sell it at a less sum, the supposed value of the contract disappears proportionately as the price is reduced.

It is clear that the selling price fixes the value of the contract. If the selling price were \$30 per horsepower, the contract, upon the line of reasoning adopted by the company, would be of much greater value than \$4,000,000. If the selling price is \$16 per horsepower, then the contract has no particular value except as it insures to the company a supply of energy at all times.

The whole matter, therefore, depends upon the question whether the company has a vested right to sell its electric energy at the cost of steam generated energy at the switch-board. If it has such a right, obviously the Commission can not interfere with it. The company has offered no argument whatsoever in support of this proposition. It has merely assumed such a right without even stating it in words.

By reducing the value of this contract for the purposes of this case to \$2,000,000, it has wholly surrendered the contention that the Commission can not reduce the price, or in other words, interfere with the return upon the claimed property value of the contract.

It is a conceded fact that Niagara generated power is cheaper than steam generated power. There is a great saving; and the question is, who gets the benefit from the saving? This question was propounded directly to the principal witness for the respondent, and his answer was:



My conclusion is that it is fair to all parties to divide the advantages of hydraulic generated electric power between the public and the people whose enterprise makes the utility of the hydraulic power by this process.

This conclusion seems to be concurred in by the respondent; and therefore, instead of insisting upon a return upon the sum of \$4,000,000 and upward, which is logically, upon its contention, the value of the contract, it contents itself with placing the value of the contract, at \$2,000,000. When it concedes that there should be any reduction in the selling price because it is fair and reasonable, it yields the point that it has a vested right to the entire difference in cost. It concedes that what is fair and reasonable is the principle by which the selling price must be determined, and not because it has any property right to the difference. It concedes that under all of the circumstances of the case, it is fair and reasonable that the saving, as it terms it, should be divided between the public and itself. This opens the question at once, what tribunal is to determine what is fair and reasonable? Is the company itself to determine it, or is it the Commission? If the Commission says that the fair and reasonable proposition is that the profit should be divided between the public and the company, then the company has succeeded in its contention: but not upon the ground of a vested property right. If the Commission says that the public should be entitled to the entire difference, or that the public should be entitled to three-fourths of the so-called saving and the company to one-fourth, the property value of the contract disappears in whole or in part, and the Commission has not confiscated any property but has merely determined what is fair and reasonable under all of the circumstances of the case. This line of reasoning leads directly to the conclusion that the value of the contract is dependent upon the determination of the Commission, and not that the value of the contract is independent of the determination of the Commission and superior to it.

The position of the company also is not defensible, for the reason that it does not go back to the generating plant, namely that of The Niagara Falls Power Company at the Falls. Let it be assumed that The Niagara Falls Power Company can produce electric energy at its busbars at a

cost of \$7 per horsepower, and that the cost of electric energy developed by steam at the same point would be \$25 per horsepower. Upon such assumption, there is a clear profit upon the 37,500 horsepower secured in the contract of \$18 per horsepower, or \$675,000 per annum. If this profit or saving is to be divided with the public, then the public is entitled to get the electric energy at the busbars at \$16 per horsepower, and the profit to the company from the use of the water power is \$9. The respondent, however, is willing to divide with the public only the difference between \$16 and \$25, namely \$9; so that in effect the public gets only one-fourth of the saving effected by the use of water instead of one-half. Its equity in one-half of the saving is cut down to one-fourth by the device of a subsidiary company.

This reduction in the share accruing to the public, or as it may be termed, in the saving, may be carried still further. If the Cataract company is entitled to a profit of \$4.50 upon the energy which it sells, it is entitled to that profit upon all energy sold to the Buffalo General Electric Company. The Buffalo General Electric Company, in its purchase from the Cataract company, gets a right upon the theory of respondent to some of the advantages of the water power, and it is as much entitled to one-half of the profits as the Cataract company; hence it would be entitled to take out \$2.25 per horsepower for its advantage, and the public would then get only \$2.25 for its share, or one-eighth of the saving. Upon the assumption of division of the saving, if the public deals directly with The Niagara Falls Power Company it is entitled to get the energy at \$16 per horsepower, just what the Cataract company pays. By the intervention of the Cataract company it is required to pay \$20.50, and by the further intervention of the Buffalo General Electric it is required to pay \$22.75.

Such results as these will never satisfy the elementary sense of right and justice in the mind of any man with regard to the use of Niagara generated electric energy. No generating company using the waters of Niagara River owns those waters or has any right or title to them whatsoever.

By the permission of the Federal Government and of the State of New York, the generating companies operating at the Falls are given the free use of those waters in the production of electric energy. To say that by having been given the free use of those waters for that purpose they are vested with an unassailable right to charge as much for the electric energy developed as they would for energy developed by steam plant, is a proposition which requires to be maintained rather than to be refuted. It may very well be that these companies are entitled, in view of all of the circumstances of the case, to a liberal return upon the capital actually invested in developing the energy. It may very well be that the people exploiting the enterprise are entitled to large, and even very large, profits for the skill they have displayed and the risk to which they have subjected their capital. It may be that the public ought to pay them very liberally for the work which they have carried on in the public interest; but to say that the public is entitled to no advantage from the use of these waters, that the territory which can be served with electric energy developed at Niagara Falls has no advantage and is entitled to no benefit by reason of proximity to those Falls, is to say something which does not appeal to the best judgment of mankind for an instant.

We may, therefore, dismiss without further consideration the claim of the company that its contract with The Niagara Falls Power Company has a value of \$2,000,000 upon which it is entitled as a matter of right to a return of not less than 6 per cent. per annum; and the question of what return it is entitled to, if any, in excess of the cost of steam generated electric energy, is one which may be considered in another connection.

#### REPRODUCTION COST NEW OF FIXED CAPITAL.

The great bulk of the evidence was directed, both upon the part of the City and the respondent, to the endeavor to establish the cost of reproducing new the fixed capital of the company. The following table is an analysis of the evidence submitted by both parties as to the cost of such reproduction new of the entire tangible property of the company:

# FUHRMANN vs. THE CATARACT POWER & CONDUIT CO. 1031

ITEM	COMPANY (Jackson)	CITY	DIFFERENCE	EXCESS OF LARGER ESTIMATE OVER SMALLER, %
<b>LABOR AND MATERIALS COSTS.</b>				
Land .....	\$ 102,655	\$61,162	\$41,493	68
General structures .....	20,733	19,579	1,154	6
General equipment .....	12,681	6,263	6,418	102
Sub-station buildings .....	116,935	141,551	24,616	21
Sub-station equipment .....	734,604	627,586	107,018	17
Poles and fixtures .....	21,857	26,555	4,698	21
Terminal "B" tower .....	23,006	14,418	8,588	60
Ducts:				
Underground conduit and laterals .....	\$239,732			
Pipe crossing, Buffalo River .....	12,769	263,976	11,475	5
<b>Overhead wire:</b>				
Transmission system .....	\$11,309			
Distribution system .....	105,868			
Electric services .....	15,572			
<b>Underground cable:</b>				
Transmission system .....	\$579,425	114,904	17,845	16
Distribution system .....	34,651			
Electric services .....	2,222			
Transmission system, Niagara River crossing .....	616,298	442,727	173,571	39
Line transformers .....	16,918	3,364	13,554	402
Electric meters .....	22,382	17,725	4,657	26
Tools and implements .....	40,401	37,006	3,335	9
Electrical laboratory equipment .....	434	.....	434	.....
	3,609	3,551	58	2
TOTAL FIXED CAPITAL .....	\$2,117,763	\$1,780,427	\$337,336	19
Materials and supplies .....	25,694	.....	25,694	.....
Meters and transformers in stock .....	12,451	.....	12,451	.....
Operating capital .....	175,000	96,103	78,897	82
Work in progress .....	109,347	109,347	.....	.....
TOTAL LABOR AND MATERIALS COSTS .....	\$2,440,255	\$1,985,877	\$454,378	23
VARIOUS OVERHEAD PERCENTAGES .....	1,063,753	.....	1,063,753	.....
<b>FINAL GRAND TOTAL .....</b>	<b>\$3,504,008</b>	<b>\$1,985,877</b>	<b>\$1,518,131</b>	<b>76</b>

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It will be noted that the total cost of labor and materials entering into the fixed capital as claimed by the company is \$2,117,763; and as claimed by the City, \$1,780,427. The difference between the two is \$337,336, an excess of the company's claim over that of the City of 19 per cent.

It will be further noted that the company adds to its labor and materials costs various overhead percentages amounting to \$1,063,753. It is understood that while the City admits that certain overhead charges in the way of engineering, superintendence, interest during construction, and the like must be reckoned with in the cost of reproduction new, it claims that it has made due allowance for the same in the labor and materials costs, and that therefore such costs as set forth in the table represent fair reproduction cost new of the property.

The final totals of the reproduction cost new of the tangible property of the company are \$3,504,008; of the City, \$1,985,877: a difference of \$1,518,131; an excess of the company's estimate over that of the City of 76 per cent.

The following table is an analysis of the claim of the company concerning the reproduction cost of that portion of its property represented by fixed capital. This table shows the labor and materials costs of the various items, the percentages which should be added to the various costs, and the sum of all the labor and materials costs and percentages. It will be observed that the total reproduction cost new of the fixed capital as claimed by the company is \$3,156,332.

KIND OF PLANT	LABOR AND MATERIALS	ADD FOR ENGINEERING AND SUPERVISION, %	MAKING	ADD FOR GENERAL INCIDENTALS, %	MAKING	ADD FOR INSURANCE DURING CONSTRUCTION, %	MAKING	ADD FOR ORGANIZATION OF BUSINESS, %	MAKING	ADD FOR TAXES AND INTEREST DURING CONSTRUCTION, %	TOTALS	
											\$	%
1 Land .....	\$102,655	5	\$107,788	....	\$107,788	....	\$107,788	6	\$114,235	12	\$127,966	
2 General structures .....	20,733	5	22,806	....	22,806	....	22,806	6	24,278	8	26,320	
3 General equipment .....	12,681	5	13,315	....	13,315	....	13,315	6	14,114	8	14,679	
4 Sub-station buildings .....	116,935	10	128,629	....	128,629	....	128,629	6	136,933	8	147,888	
5 Sub-station equipment .....	734,602	10	808,064	2	824,325	4	825,182	6	875,435	8	945,459	
6 Poles and fixtures .....	21,857	10	24,043	2	24,524	8	24,720	6	26,203	8	28,290	
6a Terminal "P" towers .....	23,006	..	23,006	....	23,006	....	23,006	6	24,386	..	24,386	
7 Underground conduit and laterals .....	239,732	10	266,705	1.5	267,661	....	267,661	6	283,721	8	306,419	
7a Pipe crossing Buffalo River .....	12,769	5	13,407	....	13,407	....	13,407	6	14,211	8	15,348	
8 Transmission system: .....												
(a) Overhead .....	11,309	10	12,440	2	12,689	8	12,791	6	13,588	8	14,643	
(b) Niagara River crossings .....	16,918	10	18,618	....	18,618	....	18,618	6	19,933	8	21,533	
(c) Underground .....	579,425	10	637,368	1	643,742	8	648,892	6	687,835	8	742,852	
9 Distribution system: .....												
(a) Overhead .....	105,968	10	116,455	2	118,784	8	119,734	6	126,918	8	137,074	
(b) Underground .....	34,651	10	38,116	1	38,497	8	38,805	6	41,133	8	44,327	
(c) Line transformers and devices .....	22,382	10	24,620	2	25,112	8	25,313	6	26,832	8	28,579	
10 Electric services: .....												
(a) Overhead .....	15,572	10	17,129	2	17,472	8	17,612	6	18,669	8	20,163	
(b) Underground (excluding conduit) .....	2,222	10	2,444	1.5	2,481	8	2,501	6	2,651	8	2,863	
12 Electric meters and installation .....	40,401	5	42,421	....	42,421	....	42,421	6	44,960	4	46,765	
13 Electric tools and implements .....	434	5	456	....	456	....	456	6	483	4	502	
14 Electrical laboratory equipment .....	3,609	10	3,970	2	4,049	.2	4,057	6	4,300	8	4,644	
TOTAL .....												
											\$2,697,503	
											256,439	
											\$2,953,942	
											147,697	
											\$3,101,639	
											54,693	
											\$3,156,332	

Add 10 per cent. for piecemeal construction, items 2 to 12 inclusive.  
 promoter's profit at 5 per cent.  
 Brokerage at 2½ per cent. on two-thirds of property.  
 TOTAL

It will be instructive to compare in the first instance the estimates of the company as shown by the foregoing table with its books. An examination of the company's books disclosed, as hereinbefore shown, that the total cost of the fixed capital of the company as carried upon the books was \$1,882,876. As claimed by its principal witness upon the hearing, the cost of reproducing the property new was \$3,156,332, a difference of \$1,273,456, and an increase of 67 per cent. over the amount carried upon the books.

It was suggested by the company that many of the expenses properly chargeable to fixed capital which were incurred in the construction of its plant might have been in the process of bookkeeping actually charged to operating expenses, and therefore that the books did not correctly reflect the actual cost of the property. No effort was made by the Commission's examiner to ascertain whether this suggestion was correct or otherwise. The company was advised that if the suggestion merited investigation, such investigation must devolve upon the company. It assumed that burden, and it is understood that for a considerable length of time it had an accountant upon the vouchers of the company for the purpose of ascertaining the fact. The examiner's report was submitted to the company for criticism and correction, and the firm of engineers upon which it relied as to the reproduction cost new of the property has furnished a statement showing the results of the examination as to whether any proper capital costs were included in operating expenses. Its examination seems to have covered a period from the organization of the company to December 31, 1900. The following is the material portion of the statement :

A corresponding allocation for the period from the organization to December 31, 1900, shows that the total labor and material aggregates \$555,428.69, of which \$13,575.37 is labor and material properly chargeable to capital, but which has been included in the vouchers as operating expenses. The total of capital overhead expenses for the period comes to \$103,510.20, of which \$56,610.54 has been vouchered as operating expenses. These overhead expenses come to 18.6 per cent. of the labor and material.

If it were important, the Commission would probably feel inclined to disagree with some of the allocations made in

this paragraph. It is disposed, however, to examine the question of reproduction cost new in the light of the results claimed therein. Stating such results in tabular form, we obtain the following:

Total cost to December 31, 1900 .....	\$555,428.69
Deduct overhead expenses .....	103,510.20
<hr/>	
Cost of labor and materials.....	\$451,918.49
Percentage of overhead expenses .....	18.6

The evidence submitted by the company as to cost of reproduction new of fixed capital is as follows:

Total cost of labor and materials.....	\$2,117,763
Total overhead expense .....	1,038,569
<hr/>	
TOTAL COST .....	\$3,156,332
Percentage of overhead expense to labor and materials costs...	49

If we apply the percentage of overhead expense obtained from the books, namely 18.6 per cent., to the estimate of labor and materials cost in the evidence, we obtain the following:

Labor and materials costs .....	\$2,117,763
Overhead expense (18.6%) .....	393,903
<hr/>	
TOTAL COST .....	\$2,511,666

The difference between the total thus obtained and that claimed by the company is \$644,666.

We may obtain the total cost to the company in another way. In the foregoing statement the total cost of fixed capital to December 31, 1900, is given as \$555,428.69. In this there is included, according to the statement, a certain amount of overhead expense. If this percentage of overhead expense is applied to the entire cost of the property of the company as shown upon the books, we will obtain, approximately at least, the actual cost to the company upon this theory of amount of overhead charges.



The following shows how this view of the matter works out:

Total cost to December 31, 1900 .....	\$555,428.69
Total overhead expense .....	\$103,510.20
Vouchered as expense .....	56,610.54
Overhead expense included .....	\$46,899.66
Deduct above overhead expense from total cost.....	46,899.66
Actual cost of labor and materials.....	\$508,529.03
Percentage of overhead expense included in total cost.....	92
Total cost as shown by the books December 31, 1911, including overhead expense .....	\$1,882,876.81
Deduct included overhead expense (9.2%).....	158,361.00
Actual cost labor and materials.....	\$1,724,245.81
18.6 per cent. of this for assumed overhead expense.....	320,718.00
TOTAL .....	\$2,044,963.81

The respondent's statement above quoted finds the overhead expense to be 18.6 per cent. This percentage is used to produce the above total, hence the total of \$2,044,963 would be the entire cost of construction if the same percentage of overhead expense is used as the statement claims to have been expended for the period extending from the organization of the company to December 31, 1900.

We may further note the difference between the estimated actual cost of labor and materials of fixed capital shown by the evidence and that shown by the books upon this basis:

Estimated cost labor and materials .....	\$2,117,763
Actual cost upon both assumptions .....	1,724,245
DIFFERENCE .....	\$393,518

In the foregoing table the overhead charges claimed by the respondent are stated in the form of percentages. The following is the amount of the percentages for each class of overhead expense:

Engineering and inspection .....	\$201,239
General incidentals .....	30,888
Insurance during construction .....	9,374
Organization of business .....	143,835

Taxes and interest during construction .....	200,413
Piecemeal construction .....	256,439
Promoter's profit .....	164,122
Brokerage .....	57,443
<b>TOTAL .....</b>	<b>\$1,063,753</b>

It is also instructive to see how the percentage theory of cost works out in particular cases. We may first examine its results in the case of land.

Value of land as claimed by respondent .....	\$136,607
Actual cost as shown by its books .....	54,601
<b>DIFFERENCE .....</b>	<b>\$82,006</b>

The difference is made up as follows:

Rise in value .....	\$48,054
Engineering and supervision .....	5,133
Organization of business .....	6,467
Taxes and interest during construction .....	13,711
Promoter's profit .....	6,398
Brokerage .....	2,243
	<b>\$82,006</b>
<b>TOTAL OF OVERHEAD EXPENSE .....</b>	<b>\$33,952</b>
<b>PER CENT. OF ACTUAL COST .....</b>	<b>61</b>

Analyzing the estimated cost of reproduction new of the buildings, we obtain the following:

Value of buildings as claimed by respondent .....	\$204,451
Actual cost as shown by its books .....	135,148
<b>DIFFERENCE .....</b>	<b>\$69,303</b>

The difference is made up as follows:

Increase estimated cost over actual .....	\$2,520
Engineering and supervision .....	13,766
Insurance during construction .....	651
Organization of business .....	9,125
Taxes and interest during construction .....	12,896
Piecemeal construction .....	17,410
Promoter's profit .....	9,575
Brokerage .....	3,358
	<b>\$69,303</b>
<b>TOTAL OF OVERHEAD EXPENSE .....</b>	<b>\$66,783</b>
<b>PER CENT. OF ACTUAL COST .....</b>	<b>49</b>

It should be noted in the case of the land that the evidence does not explain why the sum of \$5,133 should be added for engineering and supervision. The theory as to the other charges is somewhat self-explanatory. In the case of the buildings it is quite difficult to understand how the contention as to piecemeal construction applies. Another point which should not be overlooked is that the architect's fees actually paid are included in the actual cost shown upon the books.

**"FAIR VALUE" OF THE PROPERTY USED IN THE PUBLIC SERVICE.**

In *Smyth vs. Ames* (169 U. S. 466), decided in 1898, the Supreme Court of the United States said:

We hold that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public.

In *San Diego Land and Town Company vs. City of National City* (174 U. S. 739), the same court said:

What the company is entitled to demand in order that it may have just compensation is a fair return upon the reasonable value of the property at the time it is being used for the public.

In *Cotting vs. Godard* (183 U. S. 79), the same court said:

It [the court] has declared that the present value of the property is the basis on which the test of reasonableness is to be determined, although the actual cost is to be considered, and that the value of the services rendered to each individual is also to be considered.

In *Willcox vs. Consolidated Gas Company* (212 U. S. 19), the same court said:

There must be a fair return upon the reasonable value of the property at the time it is being used for the public. In order to determine the rate of return upon the reasonable value of the property at the time it is being used for the public, it of course becomes necessary to ascertain what that value is.

In the case of *Westchester Street Railroad Company*,\* decided by this Commission April 24, 1912, an elaborate exam-

\*Printed in Commission Leaflet No. 7, at page 81.—Ed.

ination was made as to the meaning of the word "Value," and the conclusions there reached are those which have been universally adopted by economists.

The latest authoritative definition of "Value" which has been promulgated is that of Professor Taussig, in his recent work on Economics, in which he says:

The value of a commodity means in economics its power of commanding other commodities in exchange. It means the rate at which the commodity exchanges for others.

There is nothing new in this definition. John Stuart Mill says:

Value, when used without an adjunct, always means, in political economy, value in exchange or exchange value.

Jevons says:

Value, so far as it can be correctly used, merely expresses the circumstance of its exchanging in a certain ratio for some other substance.

Again:

Value in exchange expresses nothing but a ratio, and the terms should not be used in any other sense.

The language used in the Westchester case concerning the value of a street railroad is directly applicable to an electric plant:

Its one characteristic which gives it value is its supposed power to yield directly or indirectly a money return equal to the investment with a profit thereon. Its value lies, not in what it is but in what it will produce or what it is believed it will produce in money. Generally speaking, what it will produce in money depends upon its earning power, direct or indirect.

The foregoing language was used in a capitalization case, where the exchange value was directly in question and the matter to be ascertained by the investigation in hand. The present case, however, is a rate case. In a rate case, the exchange value can not logically be a basis of inquiry for the reason that the exchange value depends upon the net income, present and prospective: and the net income depends upon three principal factors, one of which is the rate, the others being amount of service sold and cost of operation. A reduction of rate which does not increase the demand for serv-

ice necessarily diminishes the net income, and hence by so much diminishes the exchange value of the property employed in the service. If the reduction of rate increases the demand for service, such reduction may increase the exchange value, provided the increase in service be sufficiently great and without increase in operating expenses sufficient to absorb the increased earnings.

Exchange value being dependent upon the rate, it is clear that such exchange value is not the subject of inquiry in a rate case. To base the rate upon the exchange value would be generally merely to continue the rate, and it would absolutely continue it so far as the value is dependent upon the rate. If the change in rate affects the net income, it changes the exchange value; and if there be no change in exchange value there can be no change in rate.

In a very careful and exhaustive report upon plans for ascertaining the fair value of railroad properties, submitted to the National Association of Railway Commissioners at their annual convention for the year 1912, the committee said:

But no one expressly contends that value for rate making purposes should be based upon the earnings of the property. If the rates are too high, the earnings would be too high, and vice versa. One can not be used to justify the other, or else we must assume that whatever is, is right.

There would seem to be no escape from the conclusion that when courts have used the term "fair value" in rate cases, they had something in mind different from "exchange value," or in other words "value." It is not to be supposed that they did not comprehend that value depends upon the rate, and that a change in rate means a change in value if it affects net income. The earning power of property is what determines its ratio of exchange. High net earnings will give it a high ratio of exchange. No earnings at all, either present or prospective, will deprive it of practically all value.

In the case of *Smyth vs. Ames* the court gave an elaborate enumeration of what should be considered in ascertaining "value." It says:

And in order to ascertain that value the original cost of construction, the amount expended in permanent improvements, the amount and market

value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience.

This enumeration of matters to be considered may be regarded as a demonstration that the court did not have in mind "value" in its economic sense of "exchange value," since the matters enumerated do not lead logically or otherwise to a fixing of exchange value. It would be too much to say that anyone ever arrived at a conclusion as to how much he would be willing to part with for a given piece of property by any such process as is here indicated. If, however, the court was endeavoring to point out a method of reaching a just and reasonable conclusion as to the just and reasonable amount upon which the return should be allowed, it could not well have used better or more comprehensive language.

The result to be evolved from such a process as is indicated is the reasonable amount of the investment in the public service. If instead of "value" we were to say "fair amount of investment," we would satisfy in such an inquiry every elementary sense of justice and every requirement imposed by courts in their enumeration of the processes to be followed in reaching the desired result.

The organizers of a public service business at the outset of their operations are possessed of, or have power to obtain, a certain amount of floating capital which they may use in any way open to the investment of any such capital. The determination is made to convert this floating capital into fixed capital of a public service plant. The carrying out of this determination involves the destruction of the floating capital. The completion of the plant finds that the floating capital is gone and the plant is the outcome of the destruction. Personal service, energy and skill have also entered into the work of the creation of the plant, for which a pecuniary reward of some amount is just.

The reasonable sum upon which the owners of this new plant are entitled to a return is the amount of floating capital which has been sacrificed or destroyed in its production, and a just amount for the energy and skill which have been expended in producing the property which is useful in service to the public. The rate of return upon these amounts is variable, depending upon the rate which the floating capital might have earned in other employments, the risk of the enterprise, and the length of time it may reasonably be expected to earn returns. Generally speaking, these amounts may be summed up in one word, "Cost". Cost, however, can not be accepted as a fixed amount from which there can be no deviation. It may have been extravagant and wasteful. Clearly, the extravagance and waste are the loss of the owners, and should not be a burden upon the public. Skill and ability of an unusual order may have been displayed in constructing the plant, with the result of large savings in its cost as compared with cost under ordinary and average management. Such savings should be the reward of the skill and ability used in producing them, and can not be claimed as a matter of right by the consumer. Extraordinary misfortune may have occurred in the course of construction, enhancing materially the cost which might have been reasonably expected. Whose is the loss? The construction may have happened to fall in a period of either abnormally high or low prices. When prices have resumed what may be deemed to be their normal level, who is to reap the benefit of the one or bear the burden of the other—the owner or the consumer?

It is not essential to press this line of discussion further. Such considerations as the foregoing show that actual cost may not always be a basis upon which the return is to be computed, although it is a factor of large importance as being the best test of the sacrifice made in constructing the public utility.

Practically, the cost or amount of investment is frequently impossible of ascertainment. The conditions surrounding the construction are unknown. The record of the expenditures actually made has not been preserved. Whether such

expenditures were made judiciously or otherwise can not be known. In such circumstances, it is incumbent to seek some other method of ascertaining the fair amount of the investment, and the method which has been usually adopted in such cases is that of cost of reproduction new, with or without depreciation.

As a means of ascertaining the amount of the actual investment, it is confessedly imperfect. At best it can produce only an approximation. In most cases it varies so widely from the actual cost as to put the two in a position of actual hostility.

This method of ascertaining the fair amount of the investment, although it has been treated with great favor, is also subject to severe criticism. The first arises from the practical impossibility of ascertaining with any reasonable degree of accuracy the cost of reproduction new. This impossibility has been demonstrated in most attempts which are made. Engineers differ widely in their results, and this when their professional standing and integrity are in every respect equal. Most classes of work involve great difficulties in ascertaining the just unit prices, the amount and efficiency of the labor involved, the skill and push of the superintendents, the proper economies which may be practiced, the unforeseen delays and accidents. To provide against all possibilities of any character which may enhance expense, the experience of the engineer is usually dragged to its depths, his researches into the experiences of others are pushed to the uttermost. The result is that every work is charged with every expense, usually upon a percentage basis, which has ever been found to be attached under any conditions to work of the character under inquiry. The result is inevitable. It is rare that all of the alleged expenses are found in any given work, and the resultant cost is swollen beyond all reason and beyond practical experience. The cost of reproduction new is the result of estimates, and estimates must always be considered and adjudged by the light of the circumstances under which they are evolved. An estimate to induce a plunge into an enterprise is not justly comparable with one designed to justify an existing rate of dividend.



The following quotation from the report to the National Association of Railway Commissioners, above mentioned, sums up one phase of the question with admirable cogency:

There is such a wide disparity in the prevailing methods of making values of railroad properties, that in case two expert engineers, one just as honest as the other, were valuing the same property for the same purpose at the same time, one could arrive at a total value fifty per cent. greater than that found by the other expert. This glaring difference in conclusions could easily and naturally follow from the simple adoption of different rules or methods which are to-day being used in actual practice by able and experienced engineers in different parts of the nation.

The chairman of the committee making this report, in his remarks to the Association, said:

There are thirteen subjects upon which I find substantial differences of opinion, as follows: Interest during construction, engineering contingencies, franchises, adaptation and solidification of roadbed, unit prices, land values, intangible values including working capital, development cost, promotion profits and high efficiency, unearned increment, depreciation, apportionment of values, investment and gifts.

He does not attempt to state a single point upon which there is an agreement, and it would be interesting for one to attempt to find a question not enumerated in the foregoing list of thirteen matters upon which there is not marked disagreement.

A further criticism upon the use of the cost of reproduction new is that it is more obviously just to the consumer to charge against him the cost of reproducing the service rather than the cost of reproducing the existing instrument of service. Such existing instrument may be inefficient or obsolete. If competition has its full force in a given case, the tendency is for the consumer to reap the full benefit of all improvements in character and design of the plant. If monopoly exists, the expense of construction, the ill design, will not be replaced except as the newer construction can be had upon terms which will reduce operating expenses. If the saving in operating expenses is reflected in the rate, the owner receives no benefit and can not afford to change. This condition of affairs results in the complicated problems to be solved in determining who shall bear the burden of obsolescence.

It is not necessary, however, to determine whether the cost of reproduction new should ever be used as the sole basis of value in a rate case. The practical question before us is whether it should be so used in the case now before the Commission for determination. In solving this question we must consider how it actually works out.

In the case under consideration there is no practical dispute as to quantities. They are given by the company. Each party has caused a firm of engineers to attach unit prices to materials and give estimates as to the cost of labor employed in installation. There is a wide difference in the results reached. The estimates appear to have been made very largely by employees of the respective firms who did not appear upon the stand, but their tabulations and work were reviewed and revised by their principals who did give evidence as to their judgment that the results finally produced were correct. It is not to be understood that the principals did not give considerable attention to the details, but in the main the work was obviously done by subordinates. The difference in results arises largely from different unit prices for materials and different estimates as to the amount of labor required in performing the work, with a very wide difference in theory as to the overhead expenses so called: that is, the amounts of percentages which are to be added for engineering, supervision, interest during construction, and the like. There is no possibility of reconciling the evidence. There is no possibility of determining who is in the right as to a large number of matters in controversy, amounting to very material sums, without making inquiry outside of the case. The Commission has undertaken such a task in another case, with results therein detailed, which were wholly unsatisfactory and of no assistance whatever.

This case is unusual in that the books of the company have been well kept, and together with the vouchers show accurately the outlays which the company has made in the public service. There is no uncertainty about the matter whatever. There may be some questions of detail as to whether particular expenditures were properly allocated to operating expenses or to capital, but such details are prac-

tically inconsequential in the general result. We therefore are confronted with the fundamental question whether in determining the amount of the fair investment upon which the return shall be made, in other words the value, we shall give chief weight and importance to the actual cost to the company within a recent period as disclosed by its own books, or allow that cost to be overridden by the conflicting proof which is submitted of what the witnesses think the property would now cost if reproduced.

The first objection to the cost of reproduction new in this case is that it is based upon an assumed state of affairs which did not obtain in the actual construction of the plant. This assumption is that the plant is to be constructed as an entirety within the briefest possible period. It is not considered as a growth from a simple beginning, but as evolved from the plans of engineers covering the whole system, and the construction proceeding with all reasonable dispatch so that the plant is brought into existence and put in service at one time. It assumes practically that the whole plant is ready for service before any business is secured. This assumption does not correspond with the real facts of the case. The company was organized in 1896. As late as the close of 1900 we find that the money investment was only about \$500,000. In 1908 the investment had risen to about \$1,500,000, and at the close of 1911 it had gone up to nearly \$1,900,000. Extensions were built, generally speaking, for serving business which was ready to be served. An extension of the distributing system would be made to reach a particular industry or business, and as soon as completed the load would be taken on. The engineering has largely been done by engineers in the regular employment of the company at a cost very much less than the percentage assumed by the company's witnesses; and as is shown by the books, large portions of the sums required as theoretical overhead expenses have never been paid.

Again, the large sum of \$256,439 is added by the respondent to the costs because of piecemeal construction. In other words, the theory is that the plant could have been constructed upon the assumption just stated for the sum of

about \$3,000,000, but having actually been constructed by piecemeal, \$250,000 should be added to that sum by reason of the extra expense incurred.

It must be confessed that this addition for piecemeal construction has logical difficulties which, however, need not be discussed for the reason that the books of the company demonstrate that the piecemeal construction which actually took place was much cheaper than the construction upon which the calculations of the company's witnesses are based.

The evidence as to the reproduction cost new given both by the company and by the City is unsatisfactory in those elements upon which the determination must be based. The quantities not being controverted, the differences arise as to unit prices and labor costs. Upon these points we have merely the judgment of a limited number of reputable engineers skilled in their profession, of considerable experience, but obviously having different experiences and resorting to different sources of information. Thus, a large part of the valuation of the property consists of sub-station equipment. It is well known that quotations as to the price of machinery of this character are little to be depended upon. There is no such thing as an established fixed price, and the manufacturing companies make their prices in accordance with the circumstances of the case; and quotations furnished by them are entitled to but very little weight. The difference between actual cost and quotations for the same articles are at times very striking.

The percentages used by the witnesses for the company for the so-called overhead expenses are not such as can meet with approval. They amount to 49 per cent. of the estimated cost of labor and materials. This is wholly out of line with the experience of the Commission, and is not in accord with the experience of the company. No evidence was introduced showing that any such percentage of expense has ever been actually incurred in construction.

It should properly be observed at this point that the question presented is different from that to be solved in cases requiring capitalization for new construction. In capitalization cases, it has to be recognized that engineering, interest

during construction, and other expenses of like nature, will be incurred. There is no means of determining in advance with accuracy just how much they will amount to. They are necessarily and unavoidably the subject of estimate. Labor and materials costs are also the subject of estimate. No one pretends that any such estimate is absolutely accurate or can be so made. It is simply the best that can be done under all of the circumstances of the case, and the practice of the Commission is to provide that the money raised shall be carefully accounted for, and if there be found to be any excess it shall not be used for any purpose without the further authorization of the Commission. No one assumes that the estimate is conclusive. It is merely tentative for the purpose of enabling the corporation to obtain a sum of money which as nearly as may be judged in advance will be sufficient for the work in hand.

Without prolonging the discussion, the conclusion of the Commission is that in this case the fair value of the property used in the public service, or what is equivalent thereto, the fair amount of the investment upon which the return should be computed, may be better ascertained by giving the greater weight to the actual cost as the basis of the inquiry than in any other way. This actual cost may require diminution if it should be found that the expenditures were extravagant or wasteful. It may require increase if it be found that any of the property has actually increased in value since it was brought into the public service, and it may require increase for other reasons. It is not assumed that the actual amount of money expended by the company and placed upon its books as the cost of the property is the fair value. It is, however, assumed that such cost taken as the chief basis of investigation will lead to more just and equitable results than any other one basis which is afforded by the evidence in the case.

#### "GOING CONCERN" VALUE.

The company makes a claim for going concern value. The amount claimed is somewhat uncertain. The witness Jackson places the going concern value at 10 per cent. of \$3,504,000, or \$350,400. The witness Metcalf places it at \$996,000; the witness Almert at \$300,000.

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In their brief, the counsel for the company aggregate several items as follows: Reproduction value new plus 1912 additions plus going concern value (Jackson), \$3,988,913. It is not clear which one of these estimates of going concern value the respondent relies upon, and it is not important at this time to settle that matter. The question to investigate is what constitutes going concern value in a rate case, and what is its proper place in an estimate of the investment or fair value of the property upon which a return should be allowed.

Going concern value, so-called, either under that name or something similar thereto, has in the last few years excited a great deal of attention and controversy before commissions and courts, with the result, as is usual in such cases, that we have various divergent and irreconcilable decisions. It is believed that at the outset an examination of the principles connected therewith will be more useful than an examination of the decisions.

The question of going concern value has arisen in two distinct classes of cases, namely those of purchase and those relating to rates. The principles applicable to one class have been sometimes applied to the other class, and therefore, if there is any distinction between the two, confusion has arisen. We may therefore first inquire whether the same principles are applicable to both classes of cases.

In purchase cases, the point to be determined is how much should be parted with by the purchaser for the purpose of acquiring the entire property, including the business attached thereto. The inquiry is as to the exchange value of the property: that is, the sum or amount which should be parted with by the purchaser in order to acquire that which he desires. The exchange value is, in case of a property whose function is simply to earn money, determined primarily by the earning power; not alone the earning power at the moment, but the earning power at the moment plus prospective earning power over a period of years. If the earning power is large, the price to be paid will be correspondingly large. If there is no earning power connected with the property, then the price will be what is ordinarily termed

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scrap or junk value, which means that the property has only that value which can be realized when it is sold for purposes other than those for which it was constructed. A plant without any business either actual or prospective of the kind which it was designed to serve has no earning power, and therefore will have no exchange value except as the physical property may be diverted to some other use which has an earning power. The exchange value depends upon the amount of net earnings. If we consider two plants the cost of whose physical property is the same, but one of which pays a 10 per cent. dividend and the other a 20 per cent. dividend upon such cost, with a reasonable prospect that the dividends will continue in the same proportion in the future, the value of one plant is clearly much greater than that of the other, not because of the greater cost of the property or the greater amount invested therein, but because of the greater value of the business attached thereto. It has a greater value as a going concern. These considerations demonstrate that in purchase cases the value of the property depends upon what can be got out of it in the way of net income. This in turn depends upon the volume of business, the operating expenses, and the rate charged. When the value of the property is considered in purchase cases, that value is the exchange value: the rate is always assumed, and is never in question. The rate actually charged is the one which is taken to be the fair and reasonable rate, and it is invariably taken to be a fixed fact in the case concerning which there is no dispute. This differentiates purchase cases from rate cases. In purchase cases the inquiry is, what is the exchange value of the plant? What is its earning power, present and prospective? And upon the amount of that earning power depends the determination in the case.

In rate cases, the question in determining the value is not how much has been or can be got out of the property, but how much has been put into it, in order that from that fact it may be determined how much may be reasonably taken out of it in the way of net income. The cause of complaint in a rate case, and hence the point in issue, is whether too

much return has been obtained from the public, and whether that return ought not to be cut down to a smaller sum: whether the net income is not too large and should not be smaller. In such a case the earning power of the plant is uncertain until the decision as to the rate is made, because that is the very thing the controversy is about. It follows that in a rate case the earning power can not be considered in determining what is the value of the property for the reason that such value depends upon the earning power and the earning power depends again upon the rate, and the rate depends upon the decision which may be made in the case.

This distinction between value in purchase cases and in rate cases is so fundamental and so vital to an understanding of the subject that it is well to devote further attention to it. Perhaps no better illustration can be framed than by showing the practical application of the distinction in the case of the company whose affairs are under consideration. That company claims the value of its physical properties to be \$3,504,000, and this for the purposes of the discussion will be assumed to be correct. Its gross income from operation in the year 1911 was \$363,000: that is, that was the sum which it had left from earnings after paying its operating expenses and taxes. It is not an unreasonable assumption that any property having a monopoly, well established in business, with a present highly remunerative business and with a prospect of increase in business, is capitalizable at a sum of which its gross income is 6 per cent. Money is seeking investment at less rates, and any property with the certainty of return equal to that afforded by the Cataract company can find plenty of money to invest therein at a return of 6 per cent. Capitalizing the gross income of \$363,000 at 6 per cent., we find that the property would be worth \$6,050,000. Upon these assumptions the conclusion is that the fair exchange value of the entire property of the company is this sum of \$6,050,000; that this is the ratio of exchange which it would possess; that a willing purchaser would be willing to part with that sum in view of a certain return of 6 per cent. or \$363,000 annually thereon.



The assumed value of the physical property of the company is, as claimed by the company, \$3,504,000. Deducting this sum from the total value of \$6,050,000, we have an intangible value in excess of the physical value of \$2,546,000. Upon the theory that going concern value is the value of the attached business, the going concern value of the Cataract company is either the whole or some part of this sum of \$2,546,000. The return at 6 per cent. on the assumed value of the physical property would be \$210,240, and the return at 6 per cent. upon the intangible value of \$2,546,000 would be \$152,760. This includes the return upon the going value, whatever that may be.

The earnings from operation during the year 1911 were \$1,516,000. If the rates of the company were reduced so as to make a cut in the gross earnings of 10 per cent., such cut would be \$151,600; and if it had been made for the year 1911, the earnings from operation would have been \$1,364,400. The operating expenses and taxes for the year as reported by the company were \$1,153,000. Deducting these from the earnings from operation the remainder would be the gross income, or \$211,400, which is only \$1,160 in excess of a 6 per cent. return on the claimed physical value.

It must be taken as a fact that under the decision of the Supreme Court there must be a return upon the physical property to the amount of its assumed value of \$3,504,000, of at least 6 per cent., which would amount, as above stated, to \$210,240. As above shown, in a purchase case, it is the earning power of the property which fixes the price that must be paid for it by the purchaser, and if the purchaser is not willing to pay that price he has the option of letting the property alone; and it is quite immaterial whether we assume in this case that the full exchange value of the property is the sum of \$6,050,000, or some lesser sum which is in excess of \$3,504,000. Having an earning power which returns more than 6 per cent. upon \$3,504,000, the argument is that it has a going concern value which is a part of its exchange value in excess of \$3,504,000. This being so, the question becomes at once, how is it possible to cut the rate of the company without confiscating *pro tanto* that value which is

known as going concern value? Taking the figures used above, a cut of 10 per cent. in the rates of the company practically annihilates the going concern value. If it can not be confiscated as a whole, neither can it be confiscated in part. The difficulty in the case is at once dissipated when it is considered that exchange value, that is to say, the value which is derived from earning power, is not and can not be the value to be considered in a rate case. It can not be too often repeated that exchange value depends upon earning power as exhibited in net income, while one question in a rate case is whether the net income is unreasonably large; and if it is unreasonably large it should be reduced.

If the net income is taken as the test of value, as it must be in considering exchange value, then it is impossible to make a reduction of rates by governmental authority; because the reduction necessarily creates a reduction in net income, and the reduction in net income necessarily reduces the exchange value, and this can plausibly be urged to be confiscation; and is, in fact, if the exchange value is to be taken as the value which is made the basis of computation in a rate case.

I think it must be taken as clear upon principle that there is a fundamental distinction as to going concern value between rate cases and cases of purchase.

Directing attention next to the principle involved in rate cases, it is to be observed that the discussion hereinbefore had demonstrates that in rate cases going concern value, if it exists, is not to be found in the amount of the earnings. It must therefore be considered as arising from either a deprivation suffered by the company in not receiving a proper return upon its investment at some prior period in its history or in some expenditure which it has made for obtaining the business, which expenditure is separate and distinct from any expenditure made in putting its plant in a condition to render service. The argument is that such deprivation of returns upon the investment made by way of dividends, or that such expenditure by way of attaching business to the property, is as much a part of the real cost of the property upon which the com-

pany is fairly and equitably entitled to returns as the money which has been put into the construction of the physical plant. Hence it is that one definition of going concern value is that which has been adopted by the respondent in this case, namely, the cost of attaching business. These two bases, namely loss of dividends and expenditure of money, should in any proper analysis of the matter be separated. There should, however, be first taken into consideration a matter which is common to both. This matter is the assumption, always implied and never stated, that the plant has a value equal to the construction cost, either actual or estimated, and this without any business attached thereto; and that to this cost there should be added the amount of deprivation of income or the amount of the expenditures made for business, or both. This assumption is not just. The construction cost is not the exchange value of the property. The construction cost may have been entirely wasted except so far as scrap value is concerned. Nor does it follow that the construction cost as being the amount of investment can always be taken as the sum upon which the return to which the owner is entitled should be computed. There must always be taken into consideration in these matters the location of the plant, and the business, either present or prospective, which may be served at such location. The plant of the Cataract company is located in Buffalo because there is business there which may be served, or there is potential business in that city which it is more than probable will be served; and the value of the plant, either exchange value or investment value, depends upon the existence of customers to be served.

We may suppose for the sake of the argument that the plant of the Cataract company, instead of being constructed in Buffalo, had been erected at some village in the county of Erie without any manufacturing interest or railroad service, say at Collins Center. Leaving out of consideration for a moment the possibility of long distance transmission, the plant at Collins Center would have no value except scrap value: that is, such value as might be found in taking the materials and selling them for use in some other business.

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Considering the plant to be erected at some remote and inaccessible point, say in Greenland, where there would be neither local demand nor possibility of long distance transmission of power, the property would not have even a scrap value, for the reason that the cost of moving it to a place where the materials could be available in another business would exceed the value at such other point.

The physical property of a plant of the character of that owned by the Cataract company has no value other than scrap value except as a going concern, and when a proper allowance has been made for the value of the physical property, meaning thereby a proper investment value, including every element which goes into that, it must include an estimate for the property as a going concern; and the going concern value is necessarily represented in that estimate. The very act of giving a value to the physical property assumes that it is a going concern, assumes that it has a business, and that that business is in some degree related to the normal capacity of the plant.

Having this fundamental distinction clearly in mind, we are now ready to proceed to an examination of the two elements of going concern value above stated, namely, money expended in attaching business to the property, and abstention from or deprivation of dividends.

Taking first the question of expenditures made in attaching business, it is universally recognized that it is proper for the company to claim reimbursement from the public for such expenditures. They are, however, universally recognized and treated as a part of the operating expenses. The company is obliged almost invariably to solicit business at the commencement of its operations and is equally obliged to continue the same during subsequent years. There is no year in which a well managed company does not expend with greater or less liberality for the purpose of either holding business or acquiring new business. Such expenditures are recognized in the Uniform System of Accounts prescribed by this Commission as legitimate charges to operating expenses. Accounts 552, 553, 554, and 555, prescribed for electrical corporations, provide for promotion expenses incurred in the

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promotion or development of electric consumption, for advertising, for canvassing and soliciting, and for promotion, wiring, and devices. The respondent itself is constantly incurring such expenses and charging them to operation. It reported expenditures chargeable to this account in 1908, \$5,959; 1909, \$10,413; 1910, \$4,727; 1911, \$4,329. These figures are cited to show that the company is now incurring expenses for attaching business and has been incurring such expenses during recent years. These expenditures are, however, operating expenses, and must be treated as any other operating expense; and the question is whether in any event such operating expenses constitute an investment upon which the public is obligated either legally or equitably to pay a return the same as it is upon the fixed capital of the company. Obviously, if the earnings from the business have been sufficient to pay these operating expenses and no deficit or indebtedness has been incurred thereby, no just reason exists for claiming that any portion of them, whether incurred for advertising, soliciting, or any other purpose, constitutes a sum upon which the public must pay returns. It has already paid them the moment they have been charged to operating expenses.

If the earnings from operation have been insufficient at any time to pay the operating expenses, a different question may be presented, and it is this: Is the company entitled as a matter of either legal right or reasonable equity to have deficits in its operating expenses paid by the public? If these deficits constitute property which is invested in the business, then, of course, the public is legally obligated to pay a return thereon in order to avail itself of the services of the company. If the fact that the company has suffered a loss in operating expenses constitutes the amount of the loss a property investment in the business, it inevitably follows that the public must guarantee the company against loss from operation. No such principle has ever been laid down in any court and it is apprehended never will be.

There is, however, another view of the matter which should carefully be considered, and that is: Although the company may not have a legal right to have such loss treated as a part

of its property, still, as a matter of substantial justice, such loss may be considered in fixing the rate so that in order to obtain for the public service the company may from the rate recoup itself for such loss and be made whole. To state the matter in another form, the loss is not an investment in the business but it is a circumstance which may justify a higher rate when the business does become remunerative than would be just if no such loss had been incurred.

Clearly, there is a very marked distinction between treating such a loss as a property right upon which a return may be legally demanded as a consideration of service, or as a circumstance which may in fairness and equity require that the company should be given a rate which will enable it to reimburse itself for the amount thereof. That this distinction is real and substantial there can be no doubt. If the company in any given year has suffered such a loss in operating expense, and in the next year in addition to a reasonable and proper return has been repaid such loss, obviously it should not continue to be repaid the amount thereof during the succeeding years indefinitely. It should be repaid only once. If the loss is treated as an investment in the property, then the company is fairly entitled to have it considered as an investment upon which it may receive a return of 6 per cent., and also a further return which will amortize the loss at some future period. The mere statement of this result shows the absurdity of such a treatment.

The conclusion is, that so far as moneys actually expended in the past for attaching business to the property after the period of operation has commenced are concerned, they must be treated as operating expenses and can not be considered in any event an investment in the property upon which the company is lawfully entitled to a return. If this view is correct, they are no part of what may be termed going concern value.

Considering now the question of whether a failure to obtain proper returns for capital actually invested in the business either during an earlier or a later period constitutes a property right and investment in the business upon which the company is entitled to a return which can not be reduced

below 6 per cent. per annum upon pain of being considered confiscation, it is to be observed that this in another form is precisely the principle which this Commission refused to recognize in the case of the International Railway Company. In that case it was contended that the company was entitled to a reasonable return upon the assumed value of its property, and that when it failed to earn such sum as was deemed to be reasonable it was entitled to capitalize the deficit; and upon this process of reasoning it figured up a capitalization of about \$10,000,000, this capitalization arising wholly from a failure to earn what the company considered to be a proper return. The Commission declined to recognize this contention, observing, among other things, that it produced the somewhat curious result that the greater the loss the greater the value of the property. The same remark applies here. If the company suffered no deprivation of dividends at the commencement of its operations, it has no going concern value from this source. If, on the other hand, during the first years of its operation it received no dividends, the argument is that it is entitled to capitalize the amount of a reasonable dividend as an expense which it incurred in getting the business started, on precisely the same ground that it is entitled to capitalize interest paid during construction.

Analyzing this contention, we must first observe that it is based upon the assumption that the investor has a legal right to a reasonable dividend upon the amount invested by him in the property, and that if the public fails to patronize his business sufficiently to pay that dividend in one year, the patrons of the business thereafter must make it up and pay a return which will treat such loss as an investment in the business. As stated above with reference to operating expenses, clearly there is no such legal right. A failure to receive returns from a business is not an investment in the business. If the principle of failure to receive returns from the investment in the business constituting a further investment in the business were to be applied throughout the country, the results would probably be somewhat startling. Whether it constitutes an equitable ground

which may justly be taken into consideration and in the exercise of a just discretion allowed for in fixing a rate, is entirely another matter.

The conclusion, therefore, is that deprivation of returns upon the investment after the operating period has commenced does not constitute an investment in the business and a property right which must be recognized as part of the fair investment value of the business and which must be recognized in the rate both for return upon capital invested and for destruction of capital.

The next question is whether such deprivation of return or loss of dividends and such expenditures for attaching the business may be fairly and reasonably allowed for in the rate which is fixed. Obviously, this depends upon the question of whether such deprivation occurred and such expenditures were made. No allowance can be made for anything which was not. No allowance should be made for an expenditure which was not incurred, or if incurred has been repaid. No allowance should be made for a dividend which was not paid unless it was equitable and just that the dividend should be paid and was in fact not paid. In this case the respondent has made no proof of such expenditures or losses. It has stood upon the theoretical proposition that any going concern has a going concern value in addition to that value which is allowed to the physical property in consideration of its being a going property. There is, accordingly, no justification in the direct evidence for any assumed expenditures or losses in the earlier years of the business. We may assume that expenditures were made in the earlier years of the business which have not been shown. We know that they have been made in the later years from the reports of the company above quoted. We know, however, that these expenditures have been charged to operating expenses. We know that the operating expenses have been paid by the public and that the returns from operation have always been greater than the operating expenses. These considerations show that no return should be made in the rate because of expenditures made for attaching the business, it being plain that all such expenditures have been heretofore paid by the public.



As to the losses in dividends, that will be a matter for proper consideration in another connection, observing however at this time for the sake of clearness that the company has established no just claim whatsoever to any return in this case for going concern value except such as is found, and necessarily found in the value of the investment in the physical property.

It would be a labor of no value to attempt to review all of the cases which have been before courts and commissions in which the question of going concern value has been considered.

Speaking of this matter of going concern value, a recent work upon the valuation of public utility properties, by Henry Floy, says:

There is no element included in the total valuation of utility properties concerning which there is greater difference of opinion or more controversy and indefiniteness with regard to methods of its evaluation.

This statement is correct as far as it goes. To it might well be added that there is great controversy as to what going concern value is, and whether it should be considered at all in rate cases.

The views hereinbefore expressed are believed to be well supported by judicial decisions. Some of these decisions are as follows:

In *Cedar Rapids Water Company vs. City of Cedar Rapids* (118 Iowa 234), the Supreme Court of Iowa said:

It is proper here to say that in reaching these conclusions we have not attempted any estimate of the "going value" of the water works as a distinct and separate item in the calculations. By "going value" we understand is meant that value which arises from having an established "going" business. While not the exact equivalent of "good will" as applied to ordinary business, it is of a somewhat similar nature and attaches to the business rather than to the property employed in such business. The fact that the business is established is of course a material fact in ascertaining the value of the plant, and especially is this true where the property is being estimated for the purpose of sale or condemnation; but as a basis for estimating profits, its signification is less apparent.

In the matter of the arbitration of the valuation of the property of the Cleveland Railway Company had in 1909,

the arbitrator was Judge Robert W. Tayler of the United States District Court, and in his decision he says:

I allow nothing for going value. Going value raises a question of definition, and it is sufficiently disposed of according to my view by saying that it only has a value as applied to a street railroad enterprise because of the expenses incident to organization, superintendence, administration, legal expenses and interest during construction; it is involved in the general subject of necessary overhead charge and arises only out of and is to be defined and limited entirely by the money necessarily expended to put it into shape where it has value as an operating instrumentality. Beyond that I recognize no value to going value or no such thing as going value to be applied to a street railroad enterprise.

In *Consolidated Gas Company vs. City of New York* (157 Fed. 849), District Judge Hough disallows good will value, which he treats substantially the same as going concern value. His remarks upon this subject are too long to quote, and it is only necessary to say that when the case came before the United States Supreme Court (*Willcox vs. Consolidated Gas Company*, 212 U. S. 19), the court said:

We are also of opinion that it is not a case for a valuation of good will.

In the case *Knoxville vs. Water Company* (212 U. S. 1), the court below had added to the appraisal \$60,000 for "going concern," as well as \$10,000 for "organization, promotion, etc." On this the court said:

The latter sum [\$60,000 for "going concern"] we understand to be an expression of the added value of the plant as a whole over the sum of the values of its component parts which is attached to it because it is in active and successful operation and earning a return. We express no opinion as to the propriety of including these two items in the valuation of the plant for the purpose for which it is valued in this case, but leave that question to be considered when it necessarily arises. We assume without deciding that these items were properly added in this case.

This language can be construed in no way except that the court was of the opinion that going concern value was a subject yet to be passed upon by it as a proper element in a rate case.

In the case *Cedar Rapids Gas Light Company vs. Cedar Rapids* (144 Iowa 426), involving the valuation of a gas plant for rate purposes, the court said:

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Also the sum of \$100,000 was included by this witness as enhancement of value by reason of being a "going concern."

It follows this statement with some discussion which is not as logically perfect as might be desired, but does make the statement:

Save as above indicated the element of value designated as "going concern" is but another name for "good will" which is not to be taken into account in a case like this where the company is granted a monopoly. The witnesses for plaintiff took into account "good will" in giving their opinion of the enhancement in value because of being a going concern, and we have no means of separating these so as to ascertain their estimate of the separate advantage of completion so as to earn a present income.

This case went to the Supreme Court, which affirmed the action of the state court in sustaining the rates in question. The case is reported in 223 U. S. 655, and was decided in March, 1912. At page 669 the court uses the following language:

Then again, although it is argued that the court excluded going value, the court expressly took into account the fact that the plant was in successful operation. What it excluded was the good will or advantage incident to the possession of a monopoly, so far as that might be supposed to give the plaintiff the power to charge more than a reasonable price. An adjustment of this sort under a power to regulate rates has to steer between Scylla and Charybdis. On the other side, if the franchise is taken to mean that the most profitable return that could be got, free from competition, is protected by the Fourteenth Amendment, then the power to regulate is null. On the other hand, if the power to regulate withdraws the protection of the Amendment altogether, then the property is naught. This is not a matter of economic theory, but of fair interpretation of a bargain. Neither extreme can have been meant. A midway between them must be hit.

In the Des Moines Gas Case the Special Master in Chancery excluded going value, saying:

In my judgment, after considering the able and thorough arguments of counsel, it is decisive of the question and holds that "going value" should not be considered in determining the basis upon which the complainant is entitled to have its return reckoned, and I feel it is my duty to so state. The physical value as hereinbefore determined is reckoned upon the fact that the plant was in successful operation when the earnings so indicated, otherwise its value would be much less. The "going value" is that enhancement which results from a well-developed and paying business.

In the case *Mayhew vs. Kings County Lighting Company*, decided by the Public Service Commission of the First District of this State, "going value" was disallowed except so far as it was represented in construction costs, including promotion and organization, contractor's profits, engineering, supervision, etc.

The same Commission, in the case of the *Queens Borough Gas and Electric Company*, decided in 1911, had under consideration the proper treatment of early losses or the cost of establishing business, and its conclusions are stated in the following language:

But it ordinarily happens during the first few years of operation that the company does not earn a fair return. How, then, are the investors to be made whole?

There are two solutions. One is to capitalize the losses or deficiencies below a fair return and all the other elements which are said to be included in "going concern". This would be accomplished by using the proceeds from the sale of stocks, bonds or notes to pay expenses for "going concern" and a fair return to investors. To use money from such sources to pay dividends would be absurd, dangerous and unjustifiable. If such a practice were started, where would it end? Probably in bankruptcy and dissolution.

The use of capital moneys to pay current expenses after operation has been begun is open to similar criticism. Who is to determine whether a canvasser, an accountant, an engineer, or a laborer is to be paid out of capital or earnings? All are connected with the *operation* of the plant, but if the theory is sound that "going concern" expenses are to be charged to capital, the wages or salaries paid to certain employees must be paid out of capital. Who is to decide when this shall be done, or when it shall cease after it has once been started? How may one determine when an employee is contributing to "going concern"? It is easy to fix a date when the construction period ends and operation begins, but how may one know when "going concern" expenses cease? To follow this solution of the problem would open the door wide to overcapitalization, financial manipulation and the misappropriation of funds.

The other solution is to charge all such expenses to operation, to attempt to make no fine-spun distinctions and then to permit the company to charge in later years rates sufficient to offset its deficiencies below a fair return in the first few years. This method involves no questions as to capitalization and can not result in the inflation of securities. Ordinarily, the company which is wisely managed follows this very course and works out an adjustment by itself. Questions arise only when the State, through some agency, is called upon to determine whether the rates are reasonable. Then the rate of return to be allowed upon the investment should be such as to offset losses in early years. This principle is adopted in this case, and no further allowance is made for "going concern" in determining the fair

value of the property. When we come to the discussion of a fair rate of return, the other phases of this principle will be considered.

There are other cases which are irreconcilable with the views herein expressed and with the cases cited. They have been given careful examination. The reasoning where any existed, has been carefully analyzed, with the result that the Commission is convinced that the views hereinbefore expressed are the ones which it should follow in rate cases; and therefore going concern value is disallowed in this case as a separate item of property upon which the company is entitled to receive a return except as it is reimbursed in the general valuation of the plant.

What, if any, allowance should be made in the rate to recoup the company for any supposed lack of profits to which it was fairly entitled or expense incurred in establishing the business should now be considered.

#### SHOULD AN ALLOWANCE FOR DEFERRED PROFITS OR EXPENDITURES MADE, BE MADE IN THE RATE?

In considering the question whether an allowance should be made in the rate for deferred profits or actual expenditures made, or both, it may be well to consider, first, an assumption which runs through the evidence of the three witnesses sworn on behalf of the respondent that it is almost, if not quite, a matter of course that these elements necessarily exist in the case of any company. This feeling seems to be entertained by counsel for the respondent in their brief in calling marked attention to the fact that "the City has offered no testimony to controvert our claims in this regard [of going concern value]".

Mr. Jackson defines this element of value as "the value that comes from associating or attaching a plant to its business which vitalizes the plant and gives it an earning capacity". He speaks of it as a value additional to the cost of the plant; and as his evidence is understood, what he has in mind is earning power. He indicates, however, one way of ascertaining such value to be the making of calculations or estimates of the cost which a duplicated plant, which he

calls a phantom plant, that is ultimately expected to cover the same territory, for the purpose of ascertaining the cost, would be required for getting the income, the business associated with this phantom plant.

The witness Almert seems to put the value upon the basis of expense sustained in attaching the business, for which the company should be reimbursed, and he says: "I have made an allowance for advertising and soliciting of three-quarters of a cent per watt of the load connected, which in this case amounts to \$300,000." He says this is a part of the going value, but not the whole of it.

The witness Metcalf defines going value as the value of the creating or existing income of the plant. He says: "The two methods which have been used might be termed in a general way the cost of developing business; and the second, the going value, determined by the method of reproduction." Further, he says: "Whereas the other method involved the determination of the cost of reproducing the income as of to-day, the idea being to reproduce as of to-day the income in a similar manner to that which you reproduce the cost of the physical plant as of to-day."

While the matter is not entirely clear, it would seem that all of the witnesses have in mind either a method of estimating the actual cost of developing the business or the assumed cost of developing an equal business with a phantom plant. They have different theories or methods for arriving at their results. It is well to compare these theories with the actual experience of the respondent.

The following table discloses the experience of the respondent for the last six years of its existence, in these respects:

PERIOD	ACTUAL EXPENSES ATTACHING BUSINESS	DIVIDENDS PAID	OPERATING REVENUE	OPERATING INCOME	NET INCREASE IN FIXED CAPITAL	TOTAL COST OF FIXED CAPITAL AT CLOSE OF PERIOD
Year ended June 30, 1906.....	\$3,048	\$140,000 1	\$728,194	\$271,100	\$122,874	\$1,093,110
Year ended June 30, 1907.....	3,739	99,997 2	889,610	305,282	216,424	1,309,534
Six months ended December 31, 1907.....	1,789	120,000 3	504,190	138,801	139,771	1,449,305
Year ended December 31, 1908.....	5,959	120,000	1,058,531	264,782	121,388	1,570,693
Year ended December 31, 1909.....	10,413	120,000	1,211,930	211,973	48,322	1,619,015
Year ended December 31, 1910.....	4,727	150,000	1,407,171	347,099	123,098	1,742,114
Year ended December 31, 1911.....	4,329	120,000	1,516,100	363,138	140,763	1,862,877
	\$34,004	\$869,997				

1 Year ended December 31, 1905.      2 Year ended December 31, 1906.      3 Year ended December 31, 1907.

Under the Uniform System of Accounts prescribed by this Commission, each electrical corporation is required to keep an accurate account of all expenses of this nature. This system of accounts was in operation for the years 1909, 1910, and 1911. An examination of the reports of the company shows that it substantially kept the same account for three years preceding thereto, and accordingly the second column shows the actual expenditures made by the company in attaching business during the six years ended December 31, 1911, and the total amount is \$34,004. These expenditures were charged to operating expenses, and therefore the company has fully been reimbursed in this respect, unless there was a deficiency in dividends which it ought to receive. The column headed "Dividends paid" shows dividends which it actually received during these six years, and the total amount thus received was \$869,997; so that so far as this period is concerned, the company has been remunerated with reasonable liberality, considering the fact that not one dollar was put into the company by the stockholders from their own pockets, the plant being constructed entirely from proceeds of bond sales and from income derived from operation.

Another fact of great importance is that the column headed "Operating revenue" shows that such revenue for the year ended June 30, 1906, was \$728,194; while for the year ended December 31, 1911, it was \$1,516,100. The increase in business during the last five years was therefore \$787,906, while all of the expenditures for inducing this increase made during the time were \$34,004.

According to the witness Metcalf, the cost, as it might be termed, of acquiring the business for the phantom plant was \$1,000,000. Apportioning this cost to the business acquired during the last five years, we find that upward of \$500,000 of it is assignable to that period, while the expense actually incurred was \$34,004. It may be answered to this that the expenses were incurred during the previous history of the company. There is nothing, however, to show that this is the fact, and an analysis of the accounts of the company would show that it is not a fact.



However, the subject is not yet exhausted. The following table is a classification of the operating revenues of the respondent for the six years ended December 31, 1911, showing the source from which its revenue was derived:

## REVENUES CLASSIFIED BY CERTAIN SELECTED SOURCES.

SOURCE OF REVENUE.	YEAR ENDED JUNE 30, 1906	YEAR ENDED JUNE 30, 1907	6 MOS. ENDED DEC. 31, 1907	YEAR ENDED DEC. 31, 1908	YEAR ENDED DEC. 31, 1909	YEAR ENDED DEC. 31, 1910	YEAR ENDED DEC. 31, 1911
City of Buffalo .....	\$37,500 <sup>1</sup>	\$37,500	\$18,750	\$72,613	\$79,671	\$83,701	\$78,615
International Railway Co.....	250,233 <sup>2</sup>	240,907	147,691	322,350	333,886	386,782	419,580
Buffalo General Electric Co.....	199,000 <sup>3</sup>	230,000 <sup>3</sup>	128,560	247,123	258,873	296,781	319,322
All other sales of current.....	238,839	377,211	206,959	413,395	538,450	638,640	697,456
Miscellaneous electric revenue.....	2,622	3,992	2,230	3,050	1,050	1,267	1,127
TOTAL OPERATING REVENUE.....	\$728,194	\$889,610	\$504,190	\$1,058,531	\$1,211,930	\$1,407,171	\$1,516,100

<sup>1</sup> Estimated on basis of 1907 figures.

<sup>2</sup> Estimated on basis of amounts paid for "hired power" by International and Crooktown Street Railway companies as reported by them.

<sup>3</sup> Estimated on the assumption that the cost of power purchased by the Buffalo General Electric Company from The Cataract Power and Conduit Company in the years ended June 30, 1906 and 1907, bears the same relation as in the six months ended December 31, 1907 (about 98 per cent.) to the total cost of power purchased by the Buffalo General Electric Company from all sources.

An analysis of this table shows that for the year ended December 31, 1911, of a total revenue of \$1,516,100, \$817,517 was obtained from the City of Buffalo, the International Railway Company, and the Buffalo General Electric Company; and \$1,127 from miscellaneous electric revenue, which to some extent at least was not derived from the sale of electric energy; leaving for its power business generally total receipts of \$697,456. It will not be claimed that there was any appreciable amount of expenditure in obtaining the business of the Buffalo General Electric Company and the International Railway Company, and probably no such claim would be made in the case of the City of Buffalo, so that really whatever expenditures have been made to build up the business have been made to obtain the general power business aggregating \$697,456 in the year 1911. This business amounted for the year ended June 30, 1906, as nearly as can be ascertained at the present time and from the data at hand, to \$238,839, so that if this figure be correct the increase from June 30, 1906, to December 31, 1911, a period of  $5\frac{1}{2}$  years, was \$458,617; while upon Mr. Metcalf's theory the expense of attaching this business should be capitalized in perpetuity at upward of \$500,000, assuming of course that his theory would disregard the business of the three consumers, City of Buffalo, International Railway Company, and Buffalo General Electric Company.

Considering now the general subject of whether the company or its stockholders are entitled to any general allowance for deferred dividends to which they were reasonably entitled, expenditures made for attached business, or general promotion on account of labors, risks, and hazards incurred, the following are the considerations which appear to us to be pertinent.

No money was put into the business from the pockets of the stockholders. All of the property now owned has been procured by the use of money derived from the sale of bonds or from income derived from operation. The growth of the business has been gradual. The report of the examiner shows that the total fixed capital June 30, 1899, was \$433,996, and at the same date the bonded indebtedness was \$425,-

000. In the comments made by the company upon the examiner's report, it appears that the total cost of the plant to that time was \$555,428.69. June 30, 1906, such cost of fixed capital had increased to \$1,193,110, and the growth thereafter year by year is disclosed in the table heretofore given.

As nearly as can be estimated, and upon the basis of valuation adopted in this opinion, the property, including that not in the public service, which was owned by the company December 31, 1911, had a value of \$2,768,785. Slightly different results can be obtained by using different methods, but the difference would be immaterial. The following tabulation, therefore, is substantially correct in showing what the stockholders in this company have received without the investment of any money:

Property owned December 31, 1911.....	\$2,768,785
Deduct amount amortization reserve .....	486,499
	<hr/>
Balance .....	\$2,282,286
Deduct bonded indebtedness .....	1,384,000
	<hr/>
Net equity in property .....	\$898,286
Received in dividends to December 31, 1911 .....	929,997
	<hr/>
TOTAL RECEIVED TO DECEMBER 31, 1911 .....	\$1,828,283

It is believed that the foregoing showing does not justify any further allowance for a return upon the intangibles of any nature.

#### DEPRECIATION.

The treatment which should be accorded to depreciation in this case demands very careful consideration, the problem being somewhat different from that of a company having a perpetual franchise. The franchise of the company was granted by the City of Buffalo in the year 1896, for a term of thirty-six years. It therefore expires in January, 1932, or twenty years from January, 1912, from which time the calculations of this case are practically based for most purposes. The position of the City is in effect that at the end

of this twenty years the franchise will be renewed by the City upon fair and equitable terms, and that therefore the question of termination of franchise may be disregarded. It contends that at the expiration of the franchise term it will be so essential to consumers to have a continuation of service that the City will be under moral necessity for affording such continuation upon such terms as will be just and reasonable to the company.

On the other hand, the respondent assumes that this position is altogether too speculative; that it is impossible to guess what may be the situation of affairs in 1932; and whether the company will be permitted to occupy the streets of the City, which occupancy, of course, is essential to its continuance in business, can not be known and therefore can not be assumed. It therefore takes the position that its property must be amortized during this period of twenty years and that disregarding this claim would be legal error.

There is also the usual disagreement as to the treatment of depreciation which is found in cases of this character. Putting the two together makes a situation of extreme complication.

Some consideration of the elementary principles involved will be useful in clearing the situation. The general principle upon which the amount of return is to be ascertained is that the entire body of customers must pay an aggregate amount equal to (a) the actual proper operating expenses, (b) a reasonable return annually for the use of the capital invested in the service of the public, and (c) an amount which is equal as nearly as can be ascertained to the average annual destruction of the property employed in the public service.

It is not advisable to discuss at this time the amount of the annual reasonable return for the use of the capital invested in the public service. It is, however, essential to assume some rate for the purpose of definite calculations. Merely for this purpose, and nothing further, the return at this time will be assumed to be 6 per cent.

The depreciation problem arises with reference to that portion of the return which is above designated as (c),

namely the amount which is equal as nearly as may be ascertained to the average annual destruction of the property employed in the public service.

There is no controversy whatsoever over the proposition that the public must pay at some time and in some form for the property which is destroyed or used in affording it the service which it receives, and there is no controversy over the fact that this return should be spread equitably over the entire life of the property. A piece of machinery is put into use in the public service and for many years is practically as good as new, but at some time it becomes worn out or obsolescent and must be thrown out of service, at which time it has no value except scrap or junk value which for the purposes of the present discussion may be disregarded. The public in whose service the machinery has been worn out must pay the company for the machinery, and the first problem is to ascertain at the commencement of the service of the machinery, if practicable, with a reasonable degree of certainty, how many years the machine would remain in service. This number of years is termed the life of the machine. Then the value of the machine must be paid by all of the public receiving the benefits of its use and destruction during the entire life of the machine. This life has to be assumed at the commencement of the term in order that those getting the benefit of the use of the machine the first year may pay their due and proper proportion, and so on during the term of life.

When such average life has been ascertained, the method of treating the depreciation so as justly and equitably to apportion it among the different consumers during the entire life of the machine must be determined. Several methods are possible. Two have been generally regarded as best in principle and simplest in practise. These are known as the sinking fund and the straight line methods. The sinking fund method is briefly that the consumers shall pay to the company each year such a sum as will when invested at compound interest, amount, with the interest accretions, at the end of the estimated term of life of the property in service, to the amount of the investment. The straight line

method is to pay to the company each year a sum equal to the amount of the investment divided by the number of years constituting the estimated term of life of the property.

The difference between the two methods is of great practical importance, and consists in this: In the sinking fund method, no part of the principal of the investment is returned to the company until the original property is taken out of service, and then the fund merely takes the place of the property thus removed because it has been worn out and destroyed by the public service.

During the term of life of the property the company gets no benefit of the annual payment made by the public. The interest accretions are added to the principal, and at the end of the estimated term the company simply has enough money to replace the property. During the entire period the company has the same amount invested or used in the public service, and therefore during the entire assumed life of the property is entitled to the same amount of annual return thereon.

In the straight line method, the average estimated annual destruction of capital is paid to the company each year, and hence the amount it has invested in the public service is constantly diminishing so far as any particular piece of property is concerned. As the amount is returned to the company, the return upon it by way of use or interest charge should of course cease. These elementary propositions, it is true, are not well understood by the public generally, and therefore a concrete illustration will probably make the matter plainer.

Assuming a piece of machinery costs the company \$20,000 and has a useful life in service of twenty years, and at the end of that term the property must be thrown out as worthless, the company is entitled to have, and the public should pay, a return of 6 per cent. each year for the use of the money invested, or \$1,200. It is also entitled to have its \$20,000 returned to it at the end of the twenty years. By the sinking fund method it gets the \$1,200 each year for the use of its money, and also the sum which invested at say 4 per cent. compounded will at the end of twenty years amount to

\$20,000. This sum would be annually \$671.63. The public should therefore on this basis pay \$1,871.63. Of this amount, \$1,200 would be for the company's dividend and \$671.63 would go into the sinking fund; and the company would get no benefit therefrom except at the end of the term, when the entire fund would be used in replacing the destroyed piece of machinery. This method of replacing machinery makes the annual payment made by the public less each year for the destruction of capital, for the reason that the public the first year has to pay for destruction only such sum as placed at compound interest would amount to the proportion which it ought to pay of the \$20,000.

In the straight line method, theoretically, the payment by the company should change each year. The public pays one-twentieth of the depreciation, or \$1,000, and also pays interest upon the amount invested. Therefore, the payment the first year would be interest \$1,200, depreciation \$1,000: total \$2,200; but the depreciation for that year having been returned to the company by the public, the public should pay upon that no more; and therefore the second year, the company having had one-twentieth of its investment returned to it, its real investment in the public service would be only \$19,000, and the return of 6 per cent. upon this would be \$1,140. The entire payment for the second year would therefore be interest \$1,140, return of capital \$1,000: total, \$2,140. The last year of the term, there being only \$1,000 which remains in the public service which has not been paid for by the public, the payment would be interest \$60, destroyed capital \$1,000: total \$1,060. If this method is used, the company must take such measures as it deems wise to replace the machine.

The practical impossibility of the foregoing arises in the following way: A rate case is brought at the end of say ten years, when half the term of the life of the machine has elapsed. Then one of several conditions may exist:

1. A sinking fund invested in outside securities may have been created;
2. A sinking fund invested in additions to the plant may have been created;



3. The destruction of capital fund on the straight line method may have been annually paid to the company and used for payment of dividends;

4. The destruction of capital fund on the straight line theory may have been paid and invested in additions to the plant;

5. The business may have yielded only the interest return of 6 per cent. and nothing whatever for destruction of capital;

6. The business may have paid the interest return and a part only of the destruction of capital charge, which may have been treated either upon the sinking fund theory or upon the straight line method.

The question then arises, do these different situations require different treatment, and if so, will they result in different rates? An examination of the different above stated situations will disclose some interesting results.

Comparing cases 1 and 3: In case 1, it would seem that the fair return would be 6 per cent. on the original investment of \$20,000 and a continuation of the annual destruction of property charge of \$671.63, making the return which the public is to pay for these two elements \$1,871.63, which is theoretically the precise return which should be paid during every year of the term of life of the machine. In case 3, after the public has paid to the company each year \$1,000, being the average amount of destruction of the property, so that at the end of ten years the company has invested in the public service only \$10,000 upon which it is entitled to an annual return of 6 per cent. or \$600, together with a continuation of the annual destruction of property charge of \$1,000, which would make a total for that year of \$1,600.

It is clear from the foregoing that the manner in which the subject has been treated in the past is always an element of great importance in reaching the conclusion in a rate case when a portion of the life of the property has expired. If the company has consistently proceeded upon the sinking fund theory, it would be inequitable to change suddenly to the straight line method of depreciation, and vice versa. Under the sinking fund method, the public has paid for these

elements of return the sum of \$1,871.63 each year, and in order properly to reimburse the company this method must be continued, and to change arbitrarily to the straight line method would cut the return down to \$1,600 a year, which would entail a positive loss to the company; while on the other hand, if the company has been charging the public upon the straight line method, as is seen above, the first year the public paid the sum of \$2,200 and the eleventh year should pay only the sum of \$1,600.

These mathematical computations need not be continued, their sole purpose in this place being to present in clear form the fact that it is impossible in a rate case equitably to adjust the matter of depreciation without considering how it has been handled by the company in the past. If it has been handled in the past upon the straight line method, a change to the sinking fund theory would obviously be unjust to the public and give greater returns to the company than it is entitled to, because an essential element of the sinking fund theory is that the company gets no benefit from the sinking fund until the end of the term, and therefore the return upon capital must be continued upon the full amount of the investment until the term of life of the property has expired.

If the company has been charging the public in the past upon the sinking fund theory, the use which it has made of the funds collected from the public for the destruction of property introduces a new complication into the problem. If the depreciation of property fund has been invested in outside securities, which is the simplest case possible, the situation has been unfairly stated. If, however, it has been invested in additions to the plant, which is a common procedure, the annual interest charge of \$1,200 a year should be continued, with a charge for destruction of property made up theoretically as follows: (a) Amount of destruction, \$671.63; (b) less profits derived from the use of new property, (c) plus depreciation of the new property. These two elements, (a) and (b), introduce complications which need not be solved at this time. They are only stated in order to show that the subject in the case of a plant whose parts have different terms of life is one of extraordinary theoretical

and practical complication. In fact, in the case of any given plant, the mathematical problem becomes so complicated that it would be hopeless to attempt to apply it in a manner which could be understood by the paying public, and the result would be accounting problems which are far beyond the power of all except a very few large companies whose revenues are so great as to enable them to work out all these matters at an expense which does not bear an undue ratio to the total amount of business transacted.

It may be well to point out at this place some of the results of the ordinary theory of depreciation as applied in rate cases.

Where the depreciation is deducted from the assumed cost of reproduction new of the property, the cost of reproduction new is taken to be the amount of the original investment, and then the assumed depreciation is deducted therefrom in order to get at what is termed the actual value of the property. The question is whether this is just or unjust to the company.

Continuing the use of the figures hereinbefore taken as the basis of the illustration, we may assume that the property being investigated is a machine which costs \$20,000, and it has been in use ten years, and the rate is being established the eleventh year. The assumed term of life of the machine is twenty years, and therefore the depreciation is 50 per cent., and the value of the property in the public service is taken to be only \$10,000.

Assume that the case presented is No. 5 above stated, namely, the business for the ten years the property has been in service has only yielded the interest return of 6 per cent. and nothing whatever for the destruction of capital. This is a common situation. The first ten years it may be assumed have been employed in building up the business and getting it to a point where it would pay proper returns upon the investment. It has in fact yielded only \$1,200 a year, when it ought to have yielded in order to fully reimburse the owners \$1,800 a year. Now, if at the end of ten years the rate making power decides that the value of the property in the public use is only \$10,000, and makes a return upon

that both for use of capital and destruction of capital, the company from that time on for this particular machine gets \$600 a year for use of capital and about \$335 for destruction of capital. The clear result is that the company by this method of treatment has absolutely lost \$10,000 of its original investment without any hope of return of the same to it.

This is not a case, however, for a treatment of the subject of depreciation in all of its complications and ramifications. That subject has been so obscured by the enormous amount of discussion which has been devoted to it, and by the confusion which has arisen from an improper use of the term "value," that it would be hopeless to attempt to present a clear and consistent theory of depreciation in all of the complicated cases which may arise. The practical question at the present time is what treatment should be accorded to depreciation in the present case, and it is probable that sufficient discussion has been given above to enable a judgment to be formed as to what should be done.

It appears from the annual reports of the company that it has been taking care of its depreciation out of the returns paid to it by the company\* in addition to paying its returns for the use of the capital invested. Its annual report for the year 1911 shows that it has accumulated for amortization of capital \$486,499. Practically, this may be and should be treated as a sinking fund for the amortization of its property at the end of its assumed term of life, whatever the term may be.

Having made this assumption, which is entirely justified by the history of the company and its treatment of its revenues, and by the amount of those revenues in the past, the problem is simplified very much from what it otherwise would be. We may proceed to compute the annual return for use of capital upon the basis of the amount actually invested without regard to what the actual physical deterioration is or attempting to compute what portion of the theoretical term of life of each of the constituent parts of the property has expired. Upon this assumption it is absolutely just to the public and to the company to compute the annual return for

\*The printed opinion reads "company". "Consumers" would seem to be the proper reading.—Ed.

use of capital upon the basis of the investment, and so long as the company continues to give good service it will be entitled to an annual return upon that amount, because that is what it has in the business.

In like manner, we have also solved the problem of the amount upon which the depreciation for destruction of capital should be computed. We have not, however, solved the question of what should be the assumed term of life, and this brings us to the question of upon what basis the company has been computing depreciation in the past.

#### RESPONDENT'S RULE FOR "ACCRUED AMORTIZATION OF CAPITAL"

The Uniform System of Accounts for Electrical Corporations prescribed by this Commission provides for an account known as "General Amortization," and the rule for the same is—

Charge to this account month by month amount estimated to be necessary to cover such wear and tear and obsolescence and inadequacy as have accrued during the month in the tangible electric capital of the corporation; such portion of the life of intangible fixed capital as has expired or been consumed during the month, and the amount estimated to be necessary to provide a reserve to cover the cost of property destroyed by extraordinary casualties; less the amounts charged for that month to the various repair accounts in Electric Operating Expenses. The amount charged (or credited) to this account shall be concurrently credited (or charged) to the reserve account No. 374, Accrued Amortization of Capital.

It is further provided, that until otherwise ordered the amount estimated to be necessary to cover such wear and tear, obsolescence, and inadequacy as had accrued during any month shall be based on a rule determined by the accounting corporation. Amortization of intangible capital shall likewise be based on rule. The rule as established by the corporation is required to be filed with the Commission.

On the 28th day of December, 1908, the board of directors of the respondent, pursuant to the requirements of the Uniform System of Accounts, adopted a resolution in compliance with the order of the Commission with reference to general amortization, which reads as follows:

*Resolved*, That from and after January 1, 1909, there be charged monthly to an account entitled "General Amortization" (being a subdivision of the

operating expenses) the amount estimated to be necessary to cover ordinary wear and tear of the company's plant and property during the month, and in addition thereto, in respect of obsolescence and inadequacy and amortization of intangible capital (other than ordinary wear and tear of the company's plants and properties) such sum as will make the aggregate of such monthly charges at the date of the expiration of the company's franchise, January 14, 1932, equal the amount of the company's capital stock and outstanding debt at that time, in excess of the estimated value of its tangible property without the franchise; less, however, the amounts charged for the month to the various repair accounts in operating expenses. The net amount charged (or credited) to this account shall be credited (or charged) concurrently to a reserve account entitled "Accrued Amortization of Capital".

It will be noted that this rule provides for the amortization of the capital stock of the company amounting to \$2,000,000, and the outstanding debts January 14, 1932, in excess of the estimated value of the tangible property of the company without the franchise. No rule is provided for determining the estimated value of the property in 1932 without the franchise, but the assumption is justified that what was intended by the company was the scrap value at that time. The capital stock amounts to \$2,000,000 and the outstanding bond indebtedness is \$1,384,000. Thus the rule contemplates an amortization of \$3,384,000 less scrap value of the tangible property.

Pursuant to this rule, in the year 1911 the company charged to account 842, General Amortization, \$123,209.50. After making all proper adjustments, the result was that the capital account, Accrued Amortization of Capital, which stood at \$372,370.86 December 31, 1910, was increased to \$486,499.16 December 31, 1911: an increase for the year of \$114,128.30. Increasing the reserve each year by this amount and compounding the same at 4 per cent., the reserve in twenty years would amount to very nearly \$3,400,000.

It should not be overlooked that in addition to this increase in amortization reserve the company increased its corporate surplus during the year 1911 \$201,108.07, in addition to paying a 6 per cent. dividend upon \$2,000,000 capital stock amounting to \$120,000.

It having been hereinbefore found that the so-called intangibles represented by the capital stock of \$2,000,000 are no part of the capital of the company, either tangible or intan-

gible, it follows that a disposition of this amortization fund must be made; and a practical solution of the question which seems the most just to all parties is to treat the accrued amortization of capital which amounted to \$486,499.16 December 31, 1911, as invested upon the sinking fund theory. Upon this treatment, and assuming a 4 per cent. return, this fund would amount at the end of twenty years, January 14, 1932, to \$1,065,968, leaving to be amortized in the future the difference between the existing capital as hereinafter found and this sum of \$1,065,968. It may be observed, however, that the amount which is to be amortized of the present capital of the company, both tangible and intangible, after making all suitable deductions for scrap values and property which is not subject to amortization, amounts to \$1,760,663, leaving a net amount to be provided for of \$694,695, which would require an annual payment into the sinking fund of \$23,342.

#### CERTAIN ITEMS OF CAPITAL NOT HEREINBEFORE DISCUSSED.

The land owned by the respondent consists of five distinct parcels, which are carried upon its books at \$54,601.45, this being their cost. This is the sum at which they are carried in the examiner's report. Land has a value for other purposes than that of carrying on the proper business of the company. It could be retired from the service at any time at its market value for such other purposes. This fact differentiates it from property which is valuable only for company operations, and it has been universally held that a company is entitled to a just and reasonable return upon the present value or market value of the land used by it in the public service. It is clearly distinguishable in principal from those things which have no value except in the service of the company, except scrap value. It is conceded by the City that the land owned by the company has a greater value than the cost. The market value, however, is in dispute. Each party called but one witness upon this point. On the part of the City, the witness Parke places the value of the land at \$61,162; and on the part of the company, the witness Mahoney places the value at \$102,655: a difference of \$41,493. We have nothing before us to show the value of these parcels

of land except (a) the aggregate cost as carried on the books; (b) the opinion of the witness Parke; (c) the opinion of the witness Mahoney; and (d) the evidence of the witness Mahoney as to the increase of land values in the neighborhood of each parcel during the past ten years or thereabouts.

The aggregate valuation given by the witness Mahoney is 88 per cent. greater than the cost price. The aggregate valuation of the witness Parke is about 12 per cent. above the cost price. The witness Mahoney on cross-examination gave the general percentage of increase in value in the vicinity of each parcel. If the present value is \$102,655, as claimed by him, and if the rise in values has been according to the percentages claimed by him, the land ten years ago would have cost about \$75,000 instead of its actual cost of \$54,000. The average increase in the period named as given by Mahoney is about 37 per cent. Applying this increase to the actual cash cost, the present market value of all the parcels would be about \$75,000, while Parke's estimate is as above stated, \$61,000.

There is nothing satisfactory in the nature of the evidence upon these matters, but there are some indications that the witness Parke has placed the value of some of these parcels too low; and it is reasonably certain from Mahoney's own evidence that he has placed the values too high. Taking into consideration the actual cost price and the probable increase in values, it is reasonable to assume that \$75,000 is about the present fair market value of these parcels.

The respondent gave proof, which was undisputed, that on December 31, 1911, it had work in process for capital additions to its property amounting to \$106,181.68. Near the close of the case it offered further evidence concerning the additions to capital in 1912, showing that it had completed work in 1912 amounting to \$147,167.88, had further work in process amounting to \$94,183.70, and had retired during the year property to the amount of \$264.57. The sum of these matters is \$241,087.01, and deducting of course therefrom the amount of capital orders in process December 31, 1911, we have left a total of \$134,905.33 as the capital additions made in 1912 and the work in process up to Octo-



ber 31, 1912. The City objected to the reception of this last evidence, and claimed that the whole case should stand upon the basis of the property in use or in process December 31, 1911.

It seems unobjectionable, however, to add to the property of the company this sum of \$134,905.33, since it is property which would be in the service of the public upon the rate which is to be established by the decision of the Commission, and it should certainly earn a return thereon. The adjustments which would have to be made in considering the earnings and operating expenses of 1912 are not important in the final result. Therefore, this sum of \$134,905.33 should be taken as a part of the property of the company.

There is considerable dispute between the parties as to the amount of working capital actually used in the business of the company. One witness for the company places the amount at \$175,000, and the secretary of the company places it at \$200,000. The City places it at less than \$100,000. Considerable discussion was had during the hearings as to the proper method of determining working capital. Brief comment only is needed at this time.

It is obvious that the company during a given month—for example, January—incurs certain expenses. Bills to its customers for current furnished are presumably not rendered until the close of the month, and then a reasonable number of days is allowed for payment, so that its earnings for the month of January are not collected until some time in the month of February. If the company desires promptly to pay all its January bills at the close of the month, it needs a certain amount of cash on hand for that purpose, which properly may be termed working capital, and the amount needed is obviously only one-twelfth of the entire expenses of this character for one year, upon the assumption that the expenses are evenly distributed through the year by months. This in the main is a fair assumption, the great expense of the company being for current, and the other expenses which require cash payments at the close of the month being relatively inconsiderable. What is the practice of the company in paying for current is not disclosed by the evidence. A careful

examination of the contract between it and The Niagara Falls Power Company shows that it is very doubtful if the company is under any legal liability to pay for current for one month until after the middle of the following month, at which time it would have sufficient funds on hand from payments made by its customers to pay the January bill.

Such expenses, however, may not be all of the purposes for which working capital is required. Such capital may be needed to some extent for the purpose of additions and betterments to fixed capital. Of course these could be financed in another way by borrowing the money from the bank and then adding the interest to the cost of the fixed capital.

It must be said that the evidence upon the amount of working capital actually employed by the company in its business, and which will necessarily continue to be employed during the time in which the rates can be established by this Commission, is unsatisfactory and insufficient. It does not afford data sufficient to enable an accurate determination to be made. The company has plenty of money on hand which can be called working capital or not, at its pleasure. It would not be harmed in the slightest if the amount is somewhat under-estimated, as a few brief calculations would show. An over-estimate of the amount fixes upon the public a 6 per cent. charge for the over-estimate, and this of course should be avoided. Under all of the circumstances of the case, it is believed that \$80,000 is an ample allowance for this item.

Materials and supplies on hand are concededly a part of the invested capital of the company used in the public service. The company inventories its materials and supplies on hand December 31, 1911, at the amount of \$40,180. This does not appear to be disputed by the City, and may be assumed to be correct.

#### OPERATING EXPENSES.

We discover no serious criticism made by the City upon any of the operating expenses of the respondent other than the cost of power and the charge for general amortization.

As hereinbefore explained, the respondent purchases all of the electric energy supplied by it from The Niagara

Falls Power Company or the Canadian Niagara Power Company, a subsidiary of The Niagara Falls Power Company. This purchase is made pursuant to the terms of the contract with Franklin D. Locke, hereinbefore described, and several agreements supplemental thereto. Under these several agreements the respondent is paying for electric energy delivered to it at the city line of Buffalo, substantially \$16 a year for each electric horsepower delivered, the measurement being made upon what is technically known as the peak of the load. During the year 1911 it purchased approximately 230,992,278 kilowatt-hours, for which it paid the sum of \$820,093.78. Its total sales during the year were 213,025,815 kilowatt-hours. It used for its own purposes 2,097,579 kilowatt-hours, leaving approximately 15,868,883 kilowatt-hours unaccounted for, an amount of unaccounted for current which has not been criticised in any way as being unreasonable.

The sales of current to corporations were chiefly to the International Railway Company and to the Buffalo General Electric Company. The sales to the International Railway Company amounted to 79,955,000 kilowatt-hours, and to the Buffalo General Electric Company 40,026,439 kilowatt-hours. Comparatively inconsiderable amounts were sold to other railroad corporations. The sales to the International Railway Company amounted to \$419,579.59, and to the Buffalo General Electric Company to \$319,322.44. The general character of the service is indicated by the following tabulation of quantity of current sold to various classes of customers, stated in kilowatt-hours:

Municipal service .....	17,187,183
Private consumers .....	74,050,377
Railroad corporations .....	81,761,816
Other electrical corporations .....	40,026,439
<b>TOTAL .....</b>	<b>213,025,815</b>

The average net price paid by the respondent for current per kilowatt-hour was 3.1 mills, delivered as above stated at the city line of Buffalo.

A large amount of evidence was introduced by the City concerning sales of electric energy generated at Niagara Falls

by other companies and the price realized therefrom, especially the sales by the Ontario Power Company to the Hydro-Electric Commission of the Province of Ontario. There was also evidence given concerning the price charged by the Cliff Electrical Distributing Company of Niagara Falls, as well as some evidence concerning prices elsewhere. The object of this evidence was understood to be to show that the price paid by the respondent to The Niagara Falls Power Company for electric energy was excessive, and that the price paid to the respondent by its consumers should not be governed by the price paid by the respondent for the current but rather by what it ought to pay under all circumstances of the case.

The Commission has considered with care all of the evidence pertaining to the question as last stated, and finds itself unable to agree with the contention of the City in this respect, and a brief statement of the reason of its disagreement will at this time be appropriate.

The respondent is taking current under a contract which was executed in the year 1896, and by its terms, as interpreted by subsequent modifications, is to continue in force during the term of the corporate existence of The Niagara Falls Power Company. It has not been suggested that this contract was unlawful in its inception or that it was or it is void. It has not been made to appear how The Cataract Power and Conduit Company can become released from its terms. That company has no other source of supply for electric energy, and if unable to procure the current under that contract would be compelled, if it furnished current at all, to erect a steam plant, it not appearing that there is any other source open to it for obtaining hydro-electric current than its contract with The Niagara Falls Power Company.

Assuming for the moment, and merely for the sake of the argument, that The Niagara Falls Power Company under the terms of that contract is receiving an excessive price for its current, it must be kept in mind that that corporation is not a party to this proceeding, and the rate which it charges The Cataract Power and Conduit Company is not in question directly. The only rates which are in question and which are complained of are the rates charged by The Cataract Power

and Conduit Company to its customers, and the contention is that the rate to them is excessive because of an excessive price paid by it for its energy. It is not claimed that The Cataract Power and Conduit Company can procure energy from any other source at the present time at less than \$16 for each electric horsepower. It appears quite clearly from the evidence that as matters now stand there is no source of hydro-electric energy open to the respondent other than The Niagara Falls Power Company. The Ontario Power Company's production is sold out. There is no direct proof before the Commission as to the unsold capacity of the third generating plant at Niagara Falls, commonly known as the Mackenzie plant, but the Commission understands, outside of the record, that the unsold capacity of that plant is not to exceed 46,000 horsepower, while the Cataract at the present time is taking upward of 60,000 horsepower. The situation with regard to generating electric energy at Niagara Falls is at the present time somewhat unsettled, owing to the expiration of the Burton law and other matters which need not be discussed in detail at this time.

It is quite clear that if the Commission should fix a rate which might be charged by the respondent without regard to the price paid by it for current to The Niagara Falls Power Company, the consequences might be extremely disastrous to it as well as to its customers. It is not apparent how The Niagara Falls Power Company could be required to furnish current to the Cataract company by reason of anything contained in this proceeding except under the existing contract, and the question whether that contract can be disregarded is one which this Commission should not be asked to pass upon in this proceeding, under all of the circumstances of the case.

Assuming, however, that the Commission has power to disregard the contract, there would arise a further question whether it ought to be disregarded, and it would seem to be elementary that before this Commission could pass upon the question of whether the price of The Niagara Falls Power Company is excessive or not, that company should be heard and an examination into all its affairs and history, detailed

and exhaustive, should be made. There has been no evidence adduced before this Commission which is sufficient to enable it properly to judge whether the price paid by the Cataract company is unreasonable or otherwise.

It is clear that, upon the assumption that such price is a reasonable price, there can be a substantial reduction made by the respondent to its customers, and the benefit of that reduction should not be denied them in the effort to get something more which is uncertain, and the effort to obtain which would certainly entail long and disastrous litigation, to say the least.

Considering all of the matters hereinbefore briefly referred to, the Commission is of the opinion that the part of wisdom demands that for the purposes of this proceeding at this time it be assumed that the price paid for current by the respondent is not open to question, and this without deciding or intimating whether it ought to be or may be questioned in the future in an appropriate proceeding. In fact, its decision upon this latter point could have no binding force, but it should be plainly understood that the decision of the Commission not to enter into the question of that price at this time is dictated by the consideration that the opposite course would be unwise and unreasonable.

#### GENERAL AMORTIZATION.

The subject of general amortization has been necessarily discussed somewhat fully under the head of depreciation, of which it is essentially a part. It appears from that discussion that the company has been handling its amortization upon the theory that the term of life to be reckoned with was the term of its franchise, which expires January 14, 1932. It has collected a large sum of money from the public upon that theory, which sum, if properly invested, will amount at the end of the term to upward of \$1,000,000. It may also be assumed that the company has practically proceeded upon the theory of a sinking fund invested in outside securities. In fact, a very considerable amount is actually thus invested. If it should be assumed that the sinking fund has been created by investments in additions to the

plant, the company would not be entitled to earn any returns upon that investment by way of dividends without making a deduction from the amount of the original investment equal to the amount of the fund upon which such returns were made. Otherwise there would be a duplication of returns wholly unjust. Since practically the company should be allowed to earn returns upon the investment value of all its property in the public service irrespective of the source from which the money was derived, we are compelled to adhere to the theory of the sinking fund invested in outside securities.

Deducting from the total investment value of the property in service the value of the land as non-depreciable, the working capital, the materials and supplies, and making proper allowance for the scrap value of the depreciable property, the Commission finds that the total depreciable property amounts to \$1,760,663. The sinking fund already provided will take care of \$1,065,968 of this. Hence there is depreciable property to the amount of \$694,695 which should be amortized during the twenty years of the franchise term remaining unexpired January 14, 1912.

The adoption of this period of life during which the depreciable property is to be amortized will produce some results which should not be overlooked, the first of which is that it is believed to be more favorable to the consumer at the present time than would be found if the ordinary theory of prospective life under an unlimited franchise were adopted.

Interesting questions, however, will arise at the expiration of the franchise. The company will then be the owner of what will undoubtedly be a well equipped plant in excellent operating condition which has been fully amortized: that is, has been fully paid for by the public. The company, however, will be the owner of the plant, and not the public; and if the franchise should be renewed it would be incumbent upon those in authority at that time charged with the duty of fixing the rate properly to adjust the equities as between the company and the public. In the rate which should be established at that time there can not properly be any allowance made for the amortization or wearing out of the then existing plant. The rate would necessarily be wholly confined to

the return for the use of capital invested. This fact will necessitate very careful accounting methods on the part of the company and a full appreciation by the public in 1932, if the franchise should be renewed, that no element of amortization or paying for the wearing out of the existing plant can properly enter into the rate so long as the then existing plant is continued in service. When it shall have been replaced, another question will present itself for solution.

It is the clear duty of the authorities of the City of Buffalo to make such record of this fact that it will not be overlooked or forgotten at that time.

#### CONTRACT WITH INTERNATIONAL RAILWAY COMPANY.

The respondent is supplying energy to the International Railway Company to a very large amount each year. As shown above, the International Railway Company is by far its largest customer, the sales to it in the year 1911 amounting to \$419,579.59, being in excess of 25 per cent. of the total earnings from operation. The energy so supplied is bought by the International Railway Company under a contract which by its terms continues to 1932. The International Railway Company is not complaining of the rate, has not invoked the power of this Commission, and it is doubtful if it could invoke such power, in view of the fact that it has voluntarily entered into a contract which does not expire for nearly twenty years. No one has suggested to the Commission how it acquires power to abrogate, annul, or set aside this contract, in any manner. It has not been pointed out that it was illegal in its inception; and if we were to assume that it would be possible for the Commission to disregard it, it would seem to be wise to exercise that power only upon the complaint of the aggrieved party, namely the International Railway Company, which is not before us. It may be better satisfied with the contract at the present rate in view of the fact that it has a contract with a responsible corporation to supply it for twenty years at that rate than it would be at a lower rate with only from year to year supply guaranteed. Having in mind these very obvious con-



siderations, it does not appear to the Commission that it has any power to interfere with the rate charged the International Railway Company upon the ground that it is unreasonable. If it were justly or unjustly discriminatory as against other customers, another question would be presented; but that question is not before us now, since no one has claimed that the contract is susceptible to that charge. For these reasons no attempt will be made to change the rate charged the International Railway Company.

Our attention has not been called to any other contract standing in like position. If there is such a contract outstanding, the fact that it is not recognized in the decision may require a modification of that decision or further consideration. This is said merely by way of precaution and in the belief that there is no such contract.

#### GENERAL SUMMARY.

As a conclusion from the foregoing discussion, we find that the fair value of the property of the respondent company used in the public service is the sum of \$2,287,582, including herein the present exchange value of the land owned by the company in the public service, and also the additions to capital made in 1912.

Upon this basis, we find that rates of the company should be reduced 28 per cent., with the exception of those charged the International Railway Company. The effect of this reduction is shown in the following table:

#### OPERATING REVENUES.

	1911	REDUCED	AMOUNT	PER CENT.
	EARNINGS	TO	REDUCTION	REDUC- TION
Lighting municipal buildings	\$401.51	\$289.08	\$112.43	28
Municipal power .....	78,213.74	55,713.36	22,500.38	28
Commercial metered lighting	20,352.81	14,654.02	5,698.79	28
Commercial metered power	677,103.07	487,514.16	189,588.91	28
Buffalo General Electric Co.	319,322.44	229,911.84	89,410.60	28
TOTAL OF ABOVE .....	\$1,095,393.57	\$788,082.46	\$307,311.11	
International Railway Co.	419,579.59	419,579.59		
Miscellaneous .....	1,126.92	1,126.92		
TOTAL OPERATING REVENUES	\$1,516,100.08	\$1,208,788.97		
Reduced to .....	1,208,788.97			
REDUCTION .....	\$307,311.11			

As is disclosed by this table, if applied for the year 1911, the operating revenues would have been reduced to \$1,208,788.97. The deductions from these operating revenues for the same period, which the Commission considers should be made, are shown as follows:

DEDUCTIONS FROM EARNINGS.

Operating expenses, less amortization.....	\$962,455
Taxes .....	67,247
Uncollectible bills .....	50
Obsolescence and inadequacy .....	15,000
Contingencies .....	10,000
Amortization .....	23,444
<b>TOTAL DEDUCTIONS .....</b>	<b>\$1,078,196</b>
<b>Total reduced revenues .....</b>	<b>\$1,208,788</b>
<b>Total deductions .....</b>	<b>1,078,196</b>
<b>LEAVING FOR RETURNS ON CAPITAL .....</b>	<b>\$130,592</b>

It should be clearly understood, that in reaching these results the Commission does not undertake to fix a precise rate of return upon the capital invested in the public service. Nominally, the return here shown is approximately 6 per cent. Applying the rate as reduced to the business of the future, there is not the slightest question but that it will amount to considerably more than this. No one can tell what it will be until the rate has been tried out. The Commission simply satisfied itself that the proposed reduction would not reduce the revenue below a 6 per cent. return, while it seems almost equally certain that the rate will be considerably above that.

As to the manner in which the reductions should be made, it would seem from such examination as has been given the subject that the present schedule of rates of the company is probably as nearly equitably adjusted between the consumers as can be done with the information at hand. A careful study of the matter has been made, and no better method of changing the rate has suggested itself than by making a percentage reduction from the existing rates, and it is understood that the company acquiesces in this method. This, of course, is not to be taken as a statement that the company acquiesces in a reduction, but simply that if a reduction is to be made, this is the proper way of doing it.

Further details will be settled in the order.\*

\*The order is printed at page 1174 of this Leaflet—Ed.

IN THE MATTER OF THE COMPLAINT OF LOUIS P. FUHRMANN  
AS MAYOR OF THE CITY OF BUFFALO AGAINST BUFFALO  
GENERAL ELECTRIC COMPANY.

No. 156.

*Decided April 2, 1913.*

**Reduction of Rates—Sliding Scales—Valuation of Property—Return upon Value of Franchise—Relation of Rates to Stock and Bonds—  
“Going Concern” Value—Return upon Value of Contract—  
Non-Operating Property—Construction of Rate Schedule—  
Unaccounted-for Energy.**

Buffalo General Electric Company distributes and sells electric energy in the City of Buffalo. It purchases this energy within the limits of the City principally from The Cataract Power and Conduit Company, the price paid said company being \$25 each electric horsepower. The mayor of the City made complaint that the prices charged by said company were unjust and unreasonable. After answer and hearing, the Commission finds that the general level of the rates of the company should be reduced an average of 25 per cent., with a change in form of the sliding scales used by the company in its schedules.

The opinion contains discussions of the following subjects:

(a) Fair value of the property of the company used in the service of the public.

(b) Whether the franchise of the company to occupy the streets of Buffalo constitutes property upon which it is entitled to a return from its customers, including the City of Buffalo.

(c) About the time of the formation of the company it entered into a contract with the General Electric Company of Schenectady, and as a consideration to said General Electric Company of Schenectady for entering into said contract there was issued to it stock to the amount of \$500,000 and bonds to the amount of \$100,000. The company claims in effect that a return of some amount should be allowed in the rate because of the existence of this stock and bonds. The Commission in discussing this question considers the status of investors in the stocks and bonds of public service corporations.

(d) “Going concern” value.

(e) The company claims that a certain contract which it has for power with The Cataract Power and Conduit Company has a property value upon which it is entitled to returns. The Commission holds otherwise.

(f) Returns to be allowed upon a building partly used for the purposes of the company and partly for rental.

(g) Whether the unaccounted for energy is excessive and unreasonable.

(h) The principles upon which a rate schedule for electrical corporations should be constructed.

**APPEARANCES:**

*Clark H. Hammond*, Corporation Counsel, *Harry D. Sanders*, Assistant City Attorney, for complainant.

*Kenefick, Cooke, Mitchell & Bass*, for respondent.

**OPINION.**

**STEVENS, Chairman:**

At the outset of the case against the Buffalo General Electric Company, it is well to observe that many of the most important questions arising in it have been fully discussed in the case against The Cataract Power and Conduit Company, and therefore as to these it will only be necessary to refer to such discussion and to state the conclusions reached in the case of the General Electric.

It is also probably advisable to state at this time the stockholding relationships existing between the two companies, since undoubtedly there has been some misapprehension as to this point in the minds of the public.

The capital stock of The Cataract Power and Conduit Company consists of 20,000 shares of the par value of \$2,000,000. Of this stock, 10,200 shares of the par value of \$1,020,000, a majority control, are owned by The Niagara Falls Power Company. Approximately 67 stockholders of the Buffalo General Electric Company own stock in the Cataract company. The amount so owned is approximately 7,112 shares of a par value of \$711,200, being approximately 35 per cent. of the entire stock of the Cataract company. There are 122 stockholders of the Cataract company.

The stock of the Buffalo General Electric Company consists of 37,240 shares of the par value of \$3,724,000, owned by 415 stockholders. Approximately 67 stockholders of the Cataract company own 10,026 shares of the stock of the Buffalo General Electric Company, of a par value of \$1,002,600, being 26.9 per cent. of the entire stock of this company. To state the matter in another way, stockholders having holdings in both companies own 35 per cent. of the stock of the Cataract company and 26.9 per cent. of the stock of the General Electric company. It does not appear of

record that The Niagara Falls Power Company, either directly or indirectly, has any stockholdings in the General Electric. Whether it really owns stock standing in the name of private individuals is not known to the Commission. There is nothing in the list of stockholders which indicates that such is the case.

Buffalo General Electric Company was incorporated August 19, 1892, such incorporation purporting to be a consolidation of two then existing electrical corporations, namely, the Brush Electric Light Company of Buffalo and the Thomson-Houston Electric Light and Power Company of Buffalo. The capitalization of these two constituent companies has not been ascertained nor is it particularly material.

The so-called consolidation agreement was in effect practically a purchase of the fixed capital and franchises of the consolidating companies, there being excepted from the consolidation the property of the consolidating companies consisting of cash, accounts receivable, supplies, and materials. By the agreement, stock and bonds were to be issued to named amounts and turned over to the stockholders of the constituent companies in payment for the plants and franchises, all to be free of liens and incumbrances except that the Thomson-Houston property was to remain subject to the lien of certain bonds secured by mortgage to the amount of \$600,000. The following tabulation shows the amounts issued to each company:

	STOCK	BONDS
Brush company .....	\$800,000	\$900,000
Thomson-Houston company .....	500,000	200,000
Thomson-Houston underlying bonds .....		600,000
<b>TOTALS</b> .....	<b>\$1,300,000</b>	<b>\$1,700,000</b>

The total of stock and bonds issued for the property of the two companies as shown by this tabulation was \$3,000,000. The question is presented, what was the fair value or amount of the physical property? In the reports of the company to the former Commission of Gas and Electricity for the years ended June 30, 1906, and June 30, 1907,

this value is stated to be \$900,000. Obviously this was but a mere estimate, and no particular reliance can be placed upon it.

During the progress of the examination by the Commission into the actual cost of the physical properties of the company, which is hereinafter detailed, an elaborate and exhaustive inquiry was made into the cost or investment value of the physical property taken over by the company in 1892 from the constituent companies. The results of the examination were included in the examiner's report served upon the company, and in its comments upon such report the company does not question the substantial correctness of the conclusions reached. The following is a summary of the estimate:

Land .....	\$153,993.00
Buildings .....	167,696.00
General structures .....	9,368.00
Furnaces, boilers, and accessories .....	64,789.00
Steam engines .....	92,328.00
Electric generators and accessory electric power equipment....	246,303.25
Miscellaneous power plant equipment .....	85,800.00
Poles and fixtures .....	74,154.43
Underground conduit .....	45,845.00
Steam mains .....	2,500.00
Distribution system, underground .....	8,224.54
Distribution system, overhead .....	49,041.87
Arc lamps .....	96,701.50
Line transformers and devices .....	16,500.00
Meters .....	4,793.05
Electrical laboratory equipment .....	76.00

TOTAL ..... \$1,118,113.64

Following the foregoing summary in the report are upward of twenty pages of details, going with great elaboration into the items of the property and the cost of such items. In the preparation of these schedules every available assistance was rendered by employees of the company who were in full touch with the investigations being made; and considering the circumstances of the investigation and the care exercised in making it, it is believed that the total value assigned to the physical capital as of August 1, 1892, of \$1,118,113, does not err upon the side of being too little.

In addition to stock and bonds to the amount of \$3,000,000 issued in the manner above detailed at the time of the consolidation, shortly after the consolidation the respondent issued to the General Electric Company of Schenectady stock to the amount of \$600,000 and bonds to the amount of \$100,000. On the date of the execution of the consolidation agreement, July 27, 1892, the General Electric Company of Schenectady entered into a written agreement with the individuals named in the articles of consolidation as the directors of the Buffalo General Electric Company, in and by which the said directors agreed that upon the formation of the Buffalo General Electric Company by consolidation, they would "cause the Buffalo company to execute on its part and deliver to the General company the form of contract hereto annexed marked 'D,' and also cause that company to deliver to the General company in payment for the license, rights, and privileges conferred by said contract, shares of the capital stock of the Buffalo company amounting at par to \$600,000 and 6 per cent. bonds of the company amounting at par to \$100,000, said bonds to be a portion of those provided by said consolidation agreement to be issued by the new company."

The consolidation agreement contained the following clause: "There shall be issued by said new consolidated company by direction of its board of directors \$600,000 of capital stock and \$100,000 of said authorized bonds for the purpose of purchasing additional rights, privileges or franchises for the use and benefit of said consolidated corporation."

Under and pursuant to the authority conferred by the clause last quoted from the articles of consolidation, the Buffalo General Electric Company did issue the stock and bonds to the amounts named, and did execute the contract with the General Electric Company of Schenectady known as form "D," said contract being dated the 15th day of October, 1892. There was no consideration received by the Buffalo General Electric Company for the issue and delivery of stock to the amount of \$600,000 and bonds to the amount of \$100,000, except the execution and delivery by the General Electric Company of Schenectady of said contract, form "D."

It would seem from the foregoing that the respondent commenced operations in the year 1892, with a total capitalization of \$3,700,000, consisting of stock \$1,900,000 and bonds \$1,800,000.

The subsequent history of the capitalization of the company is as follows: About September, 1904, the respondent purchased 5,000 shares of Buffalo and Niagara Falls Electric Light and Power Company stock of the par value of \$500,000, and issued in payment therefor its common stock to the amount of \$614,000 and its bonds to the amount of \$200,000. The annual report of respondent for the year 1911 states that stock to the amount of \$275,000 was sold for cash, but does not state the amount of cash received; and also states that stock to the amount of \$935,000 was issued as stock dividends. The following, therefore, is a summary of the purposes for which the capital stock of the company has been issued:

For property of Brush Electric Light Company.....	\$800,000
For property of Thomson-Houston Company.....	500,000
For agreement with General Electric Company.....	600,000
For stock of Buffalo and Niagara Falls Electric Light and Power Company .....	614,000
For stock dividends .....	935,000
For cash (amount unknown).....	275,000
<b>TOTAL .....</b>	<b>\$3,724,000</b>

The total amount of funded debt of the company as of December 31, 1911, consisted of 5 per cent. bonds of the par value of \$3,188,000. The purposes for which said bonds were issued were as follows:

To stockholders of Brush Electric Light Company.....	\$900,000
To stockholders of Thomson-Houston Company.....	200,000
To refund underlying bonds Thomson-Houston Company....	600,000
To General Electric Company of Schenectady.....	100,000
Part payment of stock of Buffalo and Niagara Falls Electric Light Company .....	200,000
Sold for cash .....	316,000
For construction of new building authorized by this Commission .....	570,000
For construction authorized by this Commission.....	243,000
Unaccounted for .....	59,000
<b>TOTAL .....</b>	<b>\$3,188,000</b>



It will be noted that \$59,000 is unaccounted for in the foregoing tabulation. The Commission has not learned for what purposes bonds to this amount were issued.

In the annual report of the company for 1911 it is stated at page 210: "\$1,859,000 was issued at time of organization for property, franchises, etc., of Brush Electric Light Company and Thomson-Houston Electric Light and Power Company." It would seem that bonds to this amount were issued, therefore, for some purpose connected with the original organization. The total capitalization of the company therefore is:

Stock .....	\$3,724,000
Bonds .....	3,188,000
<b>TOTAL .....</b>	<b>\$6,912,000</b>

all of which has been issued for the purposes hereinbefore stated.

#### CLAIMED VALUE OF THE PROPERTY IN SERVICE.

As we understand the brief of the City, it is therein claimed that the total fair value of all of the property employed by the respondent in the public service is the sum of \$1,850,407, upon which it is contended the respondent is entitled to a return of 6 per cent., and in addition thereto annually the sum of \$71,637.34 for amortization.

On the other hand, upon the basis of reproduction new the respondent claims the following as the fair value of its property in service:

Reproduction value new .....	\$4,707,011
Additions to fixed capital in 1912.....	259,129
Going value .....	1,200,000
<b>TOTAL .....</b>	<b>\$6,166,140</b>

Upon this sum it thinks it is entitled to a return of 8 per cent. per annum.

The difference between the two estimates as to the value of the property in service is \$4,315,733.

The following table is a summary of the reproduction cost new estimates of the parties. It should be observed that in the total of the estimate of the City shown in this table there is no allowance for depreciation.

# FUHRMANN vs. BUFFALO GENERAL ELECTRIC CO. 1101

ITEM	COMPANY (Jackson)	CITY	DIFFERENCE	EXCESS OF LARGER ESTIMATE OVER SMALLER, PER CENT.
<b>LABOR AND MATERIALS COSTS:</b>				
Land .....	\$244,993	\$171,000	\$73,993	43
General structures .....	37,718	28,798	8,920	31
General equipment .....	32,196	12,937	19,259	149
Sub-station buildings .....	61,095	46,357	14,738	32
Sub-station equipment .....	593,100	498,077 <sup>1</sup>	95,023	19
Poles and fixtures .....	233,577	246,970	13,393	6
Underground conduits and laterals .....	290,338	292,788 <sup>2</sup>	2,450	1
Overhead wire:				
Overhead distribution system .....			\$226,835	
Overhead services .....			32,866	
Underground cable:				
Underground distribution system .....		220,816	38,885	18
Underground services .....				
Line transformers and devices .....	254,363	209,474 <sup>2</sup>	46,889	23
Meters installed .....	267,880	255,715	12,165	5
Arc lamps, municipal .....	206,775	172,546	34,229	20
Arc lamps, commercial .....				
Electric tools and implements .....	115,418	96,240	19,178	20
Electrical laboratory equipment .....	939	416	523	126
Advertising sign .....	7,636	3,610	4,026	111
	438	438	.....	....
<b>TOTAL FIXED CAPITAL .....</b>	<b>\$2,606,167</b>	<b>\$2,254,182</b>	<b>\$351,985</b>	<b>16</b>
Materials and supplies .....	50,065	.....	.....	....
Meters, etc., in stock .....	27,471	.....	.....	....
Operating capital .....	245,000	63,011	181,989	288
Construction work in progress .....	478,290 <sup>2</sup>	136,220	342,070	251
<b>TOTAL LABOR AND MATERIALS COSTS .....</b>	<b>\$3,406,993</b>	<b>\$2,453,413</b>	<b>\$953,580</b>	<b>39</b>
VARIOUS OVERHEAD PERCENTAGES .....	1,300,018	.....	.....	....
<b>FINAL GRAND TOTAL .....</b>	<b>\$4,707,011</b>	<b>\$2,453,413</b>	<b>\$2,253,598</b>	<b>92</b>

<sup>1</sup> Does not include storage batteries.

<sup>2</sup> Phelps.

Includes Genesee Street building.

## FAIR VALUE OF THE PROPERTY IN THE PUBLIC SERVICE.

This case was tried by both parties upon the theory that the fair value was to be determined primarily by the cost of reproduction new. No other course was open to the City, it having no means of determining the actual investment made by the company in its property. It was made of choice by the company, which did not seek to show to the Commission how much had been actually invested by it in its plant.

As in the Cataract case, the Commission was not satisfied with the situation, and finding that the cost to the company could be ascertained with reasonable exactness by an examination of its books and records, it directed such an examination to be undertaken by its own examiners and engineers. The result of this examination was an exceedingly voluminous report of nearly two hundred pages. This report was submitted to both the City and the company for consideration, and after such consideration was introduced in evidence as a part of the record upon which the Commission was to make its determination. The City has made no comments thereon and offered no suggestions. The company has submitted such criticisms as it thought proper, which will be hereinafter fully considered.

The Commission has made a careful study of the report of its examiners and engineers in the light of the criticisms and suggestions offered by the company, and it believes that with some corrections to be hereafter noted, the results shown by the report should be accepted as the chief basis to work from in reaching a determination as to the fair value of the property in service. The reasons for this conclusion are substantially the same as those set forth in the Cataract case, and need not be repeated at this time. In reaching this conclusion we have carefully considered and weighed all the matters enumerated in *Smyth vs. Ames* as the basis for fixing the fair value, and indeed all others which have been suggested by counsel on either side, and have given them such weight respectively as we think they are entitled to have. We recognize valuations can not be made upon a universal and inflexible rule. In all cases the end to be attained is the same, but different roads may be traveled to reach it.

The cost of reproduction new theory, as it is applied at the present time, does not meet the approval of the Commission as controlling in this case. There is altogether too much uncertainty as to the result and too much difference of opinion as to the bases upon which the result must be founded. It is unnecessary at this time to repeat all of the illustrations of this truth which are to be found in the opinion of this Commission in the case of the Buffalo Gas Company and in the case of the Cataract company. One or two illustrations of how the theory would work out in this case, however, are subjects of proper consideration.

The chief witness for the company prepared a table showing the valuation of the entire physical property of the company and how it was built up. This table is printed as a part of the company's brief, and in order to present fairly the company's view, it is herewith reproduced, and the following is such table:

**Estimated Cost of Engineering and Supervision Expense to Construct Plant of  
Buffalo General Electric Company.**

<b>A</b>				
<b>ITEM OF EXPENSE</b>	<b>NUM- BER EM- PLOYEES RE- QUIRED</b>	<b>NUM- BER YEARS RE- QUIRED</b>	<b>ANNUAL COMPEN- SATION PER EMPLOYEE</b>	<b>TOTAL COST</b>
<b>SALARIES, WAGES, AND FEES:</b>			<i>Dollars</i>	<i>Dollars</i>
Chief engineer .....	1	3	7,200	21,600
Assistant engineer .....	1	3	4,800	14,400
Field engineering and inspection:				
Sub-station engineer .....	1	3	2,700	8,100
Distribution engineer .....	1	3	2,700	8,100
Overhead lines assistant .....	1	2	2,400	4,800
Underground lines assistant .....	1	2	2,400	4,800
Inspector at manufacturers' works .....	1	1	1,080	1,080
Inspector of cable factories .....	1	1	1,080	1,080
Inspector of building construction .....	1	1	1,080	1,080
Sub-station and distribution construction inspectors .....	4	2	1,100	8,800
Meter setting inspectors .....	2	1	960	1,920
Meter verifier .....	1	1	1,080	1,080
Meter verifier's assistants .....	2	1	840	1,680
<b>TOTAL FIELD ENGINEERING AND INSPECTION.....</b>	<b>....</b>	<b>....</b>	<b>.....</b>	<b>42,520</b>
<b>Plans and specifications:</b>				
Specification writer .....	1	1	3,000	3,000
Architect's fee .....	....	....	.....	2,500
Advice from street lighting expert .....	....	....	.....	1,000
Surveyor .....	1	1	1,500	1,500
Surveyor's assistants .....	2	1	720	1,440
Chief draftsman .....	1	3	3,600	10,800
Draftsmen .....	18	2	1,000	36,000
Draftsmen .....	2	3	1,000	6,000
Blue-print boys .....	2	2	416	1,664
<b>TOTAL PLANS AND SPECIFICATIONS.....</b>	<b>....</b>	<b>....</b>	<b>.....</b>	<b>63,904</b>
<b>Office force:</b>				
Chief record clerk .....	1	3	900	2,700
Record clerks .....	2	3	720	4,320
Chief stenographer .....	1	3	960	2,880
Stenographers .....	2	3	780	4,680
Stenographers .....	1	1	720	720
Time, pay, and cost clerks .....	14	2	780	21,840
Telephone girls .....	1	3	660	1,980
Office boy .....	1	3	416	1,248
<b>TOTAL OFFICE FORCE.....</b>	<b>....</b>	<b>....</b>	<b>.....</b>	<b>40,368</b>
Car drivers .....	2	3	720	4,320
Car drivers .....	4	2	720	5,760
<b>TOTAL CAR DRIVERS.....</b>	<b>....</b>	<b>....</b>	<b>.....</b>	<b>10,080</b>
<b>TOTAL SALARIES, WAGES, AND FEES.....</b>	<b>....</b>	<b>....</b>	<b>.....</b>	<b>192,872</b>
<b>EXPENSES:</b>				
Office rent (7000 sq. ft. @ \$.35=\$2,450 per year) .....	....	3	.....	7,350
Maintenance and depreciation on \$1,800 cars: 2 @ \$1,200 .....	....	2	.....	7,200
4 @ \$1,200 .....	....	4	.....	9,600
Telephone rent, office expenses, traveling ex- penses (no figures given) .....	....	....	.....	.....
<b>TOTAL EXPENSES .....</b>	<b>....</b>	<b>....</b>	<b>.....</b>	<b>24,150</b>
<b>TOTAL SALARIES AND EXPENSES.....</b>	<b>....</b>	<b>....</b>	<b>.....</b>	<b>217,022+</b>
<b>GRAND TOTAL ENGINEERING COSTS..</b>	<b>....</b>	<b>....</b>	<b>.....</b>	<b>217,022+</b>

**FUHRMANN vs. BUFFALO GENERAL ELECTRIC CO. 1105**

**B**

ITEM OF EXPENSE	NUM- BER EM- PLOYEES RE- QUIRED	NUM- BER YEARS RE- QUIRED	ANNUAL COMPEN- SATION PER EMPLOYEE	TOTAL COST
<b>SALARIES, WAGES, AND FEES:</b>			<i>Dollars</i>	<i>Dollars</i>
Chief engineer .....	1	1½	8,000	12,000
Assistant engineer .....	1	1½	3,000	4,500
Field engineering and inspection:				
Field assistant engineer.....	1	2	3,000	6,000
Conduit inspector .....	1	2	2,500	5,000
Wire and cable inspector.....	1	2	2,500	5,000
Sub-station and equipment inspector.....	1	2	2,500	5,000
<b>TOTAL FIELD ENGINEERING AND INSPECTION....</b>	<b>....</b>	<b>....</b>	<b>....</b>	<b>21,000</b>
<b>Plans and specifications:</b>				
Estimator .....	1	2½	1,200	3,000
Draftsmen .....	10	½	1,000	5,000
Draftsmen .....	3	1	1,000	3,000
<b>TOTAL PLANS AND SPECIFICATIONS.....</b>	<b>....</b>	<b>....</b>	<b>....</b>	<b>11,000</b>
<b>Office force:</b>				
Stenographers .....	2	½	800	800
Stenographers .....	2	2	800	3,200
Office boys .....	2	2½	600	2,700
<b>TOTAL OFFICE FORCE.....</b>	<b>....</b>	<b>....</b>	<b>....</b>	<b>6,700</b>
<b>TOTAL SALARIES, WAGES, AND FEES.....</b>	<b>....</b>	<b>....</b>	<b>....</b>	<b>55,200</b>
<b>EXPENSES:</b>				
Overhead and traveling expenses.....	....	....	....	27,600
<b>TOTAL EXPENSES .....</b>	<b>....</b>	<b>....</b>	<b>....</b>	<b>27,600</b>
<b>TOTAL SALARIES AND EXPENSES.....</b>	<b>....</b>	<b>....</b>	<b>....</b>	<b>82,800</b>
<b>PROFIT TO ENGINEERING FIRM, 50 PER CENT....</b>	<b>....</b>	<b>....</b>	<b>....</b>	<b>41,400</b>
<b>GRAND TOTAL ENGINEERING COSTS..</b>	<b>....</b>	<b>....</b>	<b>....</b>	<b>124,200</b>

## C

ITEM OF EXPENSE	NUM- BER EM- PLOYEES RE- QUIRED	NUM- BER YEARS RE- QUIRED	ANNUAL COMPEN- SATION PER EMPLOYEE	TOTAL COST
<b>SALARIES, WAGES, AND FEES:</b>			<i>Dollars</i>	<i>Dollars</i>
Chief engineer .....	1	2½	5,000	12,500
Assistant engineer .....	1	2½	2,500	6,250
Field engineering and inspection:				
Field engineers and inspectors .....	4	2½	1,500 1	15,000
Purchasing agent .....	1	2½	2,500	6,250
<b>TOTAL FIELD ENGINEERING AND INSPECTION....</b>	<b>....</b>	<b>....</b>	<b>....</b>	<b>21,250</b>
<b>Plans and specifications:</b>				
Draftsmen .....	5	2½	1,500 1	18,750
<b>TOTAL PLANS AND SPECIFICATIONS.....</b>	<b>....</b>	<b>....</b>	<b>....</b>	<b>18,750</b>
<b>Office force:</b>				
Stenographers .....	8	2½	750 1	15,000
Clerks .....	3	2½	1,500 1	11,250
Clerks for engineering accounting.....	2	2½	1,000 1	5,000
<b>TOTAL OFFICE FORCE.....</b>	<b>....</b>	<b>....</b>	<b>....</b>	<b>31,250</b>
<b>TOTAL SALARIES, WAGES, AND FEES.....</b>	<b>....</b>	<b>....</b>	<b>....</b>	<b>90,000</b>
<b>EXPENSES:</b>				
Office expenses and telephone.....	....	....	....	6,250
Traveling expenses, etc.....	....	....	....	7,500
<b>TOTAL EXPENSES .....</b>	<b>....</b>	<b>....</b>	<b>....</b>	<b>13,750</b>
<b>TOTAL SALARIES AND EXPENSES.....</b>	<b>....</b>	<b>....</b>	<b>....</b>	<b>103,750</b>
<b>GRAND TOTAL ENGINEERING COSTS..</b>	<b>....</b>	<b>....</b>	<b>....</b>	<b>103,750</b>

1 Average.





It will be noted that the final result is built up by calculating each percentage, not only upon the labor and materials cost, but also upon the amount of each previous percentage. The result is that the percentages thus computed aggregate 49 per cent. of the labor and materials cost.

How this method of calculating percentages affects the final result may best be shown by the following instance: The company, about 1903, purchased at one time 3,000 enclosed arc lamps for street lighting from the General Electric Company. The unit price of these enclosed arc lamps assumed by the witness in his evidence was \$21.70, and to that he added, as is shown by the preceding table, certain percentages, and the following shows the result which the company claims as the value of these enclosed arc lamps at the present time, and that without being installed, the installation cost not appearing in these figures:

3000 municipal arc lamps @ \$21.70.....	\$65,100.00
Engineering and supervision, 5%.....	\$3,255.00
Organization of business, 6%.....	4,101.30
Taxes and interest during construction, 4%.....	2,898.25
Piecemeal construction, 10%.....	7,535.45
Promoter's profit, 5%.....	4,144.50
Brokerage, 1%.....	1,453.46
	<hr/>
	23,387.96
<b>TOTAL .....</b>	<b>\$88,487.96</b>

*Note:* Each percentage is computed upon preceding percentages.

Dividing the total value, \$88,487.96, by 3,000, the number of lamps, we find that the company claims as the value of each of these lamps uninstalled \$29.49. As a matter of fact, the actual cost to the company for these lamps uninstalled was \$13.53  $\frac{1}{3}$ . So far as has been disclosed by an examination of the books, the company never paid for a single enclosed arc the sum of \$21.70, and the average cost of all enclosed arc lamps which it has bought, exclusive of these 3,000, was \$16.75 each. We are unable to understand, and no explanation has been offered us, why a company which has been in existence for years should be entitled to charge a promoter's profit of 5 per cent. upon new arc lamps which it buys for its service. We are also unable to understand why

a 10 per cent. charge, amounting in this case to \$7,535.45, is proper for piecemeal construction in the case of buying 3,000 arc lamps at one time.

Passing this matter, however, and assuming that some percentage charges are proper, at least in certain cases, the amount of such percentage is a matter of serious consideration. The discrepancies in the evidence of the witnesses upon these percentages as applied to the facts of this case were such as to require attention, and accordingly three engineers were asked to prepare detailed estimates of the engineering cost which would be necessary in order to reconstruct new the existing plant of the respondent. The engineers kindly complied with this request and the result is interesting. The tables on folded leaf show exactly what was submitted by them.

It will be noted that engineer A finds the total salaries and expenses to be \$217,022, engineer B to be \$82,800, and engineer C \$103,750. The total for salaries, wages, and fees given by engineer A is \$192,872, as against \$55,200 given by engineer B. Engineer B gives a total profit to the engineering firm of 50 per cent., amounting to \$41,400, but nothing is offered to show why the engineering firm should have any profit at all. It is not necessary to do more than simply to call attention to the details of this table as showing that engineers indulge in the widest latitude of opinion as to the cost of the work with which they should be the most familiar, namely the engineering. If the Commission were required to pass upon this evidence, it would simply have to make a guess as to which engineer is right, and the Commission believes that the elimination of guessing in a case of this character is an end greatly to be desired and to be attained if possible.

Returning now to the cost of the fixed capital of the company December 31, 1911, as shown by the report of the examiners and engineers of the Commission, the following table is a summary of the same:

IN

Account	FIXED CAPITAL Aug. 1, 1892	FIXED CAPITAL EXPENDITURES Aug. 1, 1892 to Dec. 31, 1911	TOTAL BOOK COST FIXED CAPITAL Dec. 31, 1911	INCLUDED IN FIXED CAPITAL BUT NOT IN SERVICE Dec. 31, 1911	FIXED CAPITAL OWNED AND IN SERVICE Dec. 31, 1911—Ex- AMINER'S AND ENGINEER'S COR- RECTED COST
	Dollars	Dollars	Dollars	Dollars	Dollars
Land devoted to electric operation.....	153,993.00	58,590.95	212,583.95	212,583.95	212,583.95
Buildings .....	167,696.00	3,277.76	163,878.24	163,878.24	163,878.24
General structures .....	9,368.00	24,522.59	33,890.99	.....	33,890.99
General office equipment .....	.....	6,002.09	6,002.09	.....	6,002.09
General stables equipment .....	.....	18,271.33	18,271.33	.....	18,271.33
General shop equipment .....	.....	428.27	428.27	.....	428.27
Furnaces, boilers, and accessories .....	64,789.00	34,827.92	99,616.92	99,616.92	99,616.92
Steam engines .....	92,328.00	7,483.97	84,874.03	84,874.03	84,874.03
Electric generators and accessory electric power equipment .....	246,303.25	.....	246,303.25	246,303.25	.....
Miscellaneous power plant equipment .....	85,800.00	.....	85,800.00	85,800.00	.....
	820,277.25	131,371.82	951,649.07	680,472.44	271,176.63
Sub-station equipment:					
Electric generators .....	.....	314,281.74	314,281.74	41,076.14	273,205.60
Accessory electric power equipment .....	.....	63,855.26	63,855.26	627.55	63,227.71
Sub-station equipment .....	.....	199,402.40	199,402.40	.....	199,402.40
Miscellaneous power plant equipment .....	.....	9,178.69	9,178.69	7,031.32	2,147.37
	.....	586,718.09	586,718.09	48,735.01	537,983.08
Sub-station buildings .....	.....	47,097.97	47,097.97	.....	47,097.97
Overhead distribution system:					
Poles and fixtures .....	74,154.43	54,914.09	129,068.52	.....	129,068.52
Overhead distribution system .....	49,041.87	145,146.61	194,188.48	.....	194,188.48
Line labor .....	.....	40,148.71	40,148.71	.....	40,148.71
Electric services .....	.....	8,290.52	8,290.52	.....	8,290.52
Municipal street lighting system .....	.....	46,828.43	46,828.43	.....	46,828.43
	123,196.30	283,788.32	406,984.62	.....	406,984.62

<b>Underground distribution system:</b>				
Underground conduits .....	45,845.00	185,619.69	231,464.69	221,858.37
Underground distribution system .....	8,224.54	193,228.11	201,452.65	201,452.65
Underground labor .....	.....	20,081.11	20,081.11	20,081.11
	<u>54,069.54</u>	<u>398,928.91</u>	<u>452,998.45</u>	<u>443,392.13</u>
<b>Line transformers and devices</b>				
Electric services .....	16,500.00	238,758.62	255,258.62	228,916.02
Electric meters .....	.....	44,133.34	44,133.34	44,133.34
Arc lamps .....	4,793.03	194,061.74	198,854.79	193,376.35
Installing arc lamps .....	93,874.00	132,901.57	226,775.57	78,266.24
Electric motors .....	2,827.50	.....	2,827.50	2,827.50
Electrical laboratory equipment .....	.....	.....	13.00	13.00
Other tangible electric capital .....	76.00	2,931.89	3,007.89	2,931.89
Miscellaneous construction expenditures .....	.....	870.48	870.48	870.48
Transformer and electric meter installation material .....	.....	3,646.55	3,646.55	3,646.55
Steam heat plant .....	2,500.00	6,940.68	6,940.68	6,940.68
	<u>120,570.55</u>	<u>1,713.88</u>	<u>4,213.88</u>	<u>.....</u>
	<u>1,118,113.64</u>	<u>625,945.75</u>	<u>746,516.30</u>	<u>561,909.05</u>
<b>TOTAL TANGIBLE CAPITAL</b> .....	<b>1,118,113.64</b>	<b>2,073,850.86</b>	<b>3,191,964.50</b>	<b>2,268,543.48</b>

Figures in *italics* indicate a deduction.

### CRITICISM OF THE COMPANY UPON THE COST AS SHOWN BY ITS OWN BOOKS.

As above stated, the company submitted a memorandum reviewing the examiner's report. Such memorandum included a comparative statement showing the cost as disclosed by the report and the valuation as given by its chief witness of the physical property. The cost as disclosed by the report is \$2,268,543.48; as given in the evidence of its witness, the labor and materials cost is \$2,633,638: a difference of \$365,094.52.

The company justly remarks that it is difficult to compare the totals of various classes of work for the reason that they are distributed differently in the examiner's report and in the inventory prepared by its witness. One single example will illustrate. The cost of installing arc lamps is made a separate matter of estimate by the company's witness, while in the examiner's report such cost is carried into "Overhead Distribution System." In order to correct this matter and afford a fair basis for comparison, the Commission has prepared a comparative statement of the estimates of cost of reproduction as given by the City and company, and the book cost of the property of the company as disclosed by the examiner's report as of December 31, 1911, in which by rearrangement the same matters are allocated all to the same class, and the following is such rearrangement:

	CITY	COMPANY	COST
Land .....	\$171,000.00	\$244,993.00	\$212,583.95
Buildings .....	96,939.00	98,813.00	80,988.96
General equipment (including tools) .....	31,704.00	33,135.00	24,701.69
Sub-station equipment .....	575,696.00	593,100.00	537,983.08
Overhead distribution system....	504,595.00	534,981.00	464,532.69
Underground distribution system	560,713.00	544,701.00	443,392.13
Line transformers and devices without installation .....	240,047.00	255,907.00	228,916.02
Electric meters without installation .....	156,832.00	208,104.00	193,376.35
Arc lamps .....	90,813.00	111,830.00	78,266.24
Electrical laboratory equipment.	3,610.00	7,636.00	2,931.89
Other tangible electric capital...	438.00	438.00	870.48
<b>TOTAL FIXED CAPITAL.....</b>	<b>\$2,432,387.00</b>	<b>\$2,633,638.00</b>	<b>\$2,268,543.48</b>

The following is a brief discussion of the questions raised by the company and the disposition of them, which in the opinion of the Commission is proper:

### *Land:*

The cost of land as shown by the books of the company is \$212,583.95. This should not be allowed. The following table shows each parcel owned by the company which it claims to be in the public service, the valuation put thereon by the witness for the company, the valuation given by the witness for the City, the book cost, and the amount allowed:

PARCEL	FOR COMPANY (MAHONEY)	FOR CITY (PARKE)	BOOKS	ALLOWED
Staats street .....	\$64,993	\$50,000	\$64,993.00	\$64,993
Tonawanda street .....	17,750	14,200	17,750.00	not used
Niagara and Tonawanda.....	11,250	6,000	11,250.00	not used
City of Lackawanna .....	1,000	800	865.00	1,000
Genesee and Huron.....	150,000	*100,000	117,725.95	150,000
TOTALS .....	\$244,993	\$171,000	\$212,583.95	\$215,993

\*Not Parke.

The two parcels at Tonawanda street, and Niagara and Tonawanda streets, it is claimed by the City are not used in the public service at the present time. This claim appears to be well founded, and the Commission has been unable to find any satisfactory evidence in the case warranting a different conclusion. They are therefore not reckoned, although the City, pursuant to the direction of the Commission, gave evidence as to their value.

As to the parcel of land called Staats Street parcel, we are disposed to accept the valuation of the witness Mahoney. As to the parcel at Genesee and Huron streets upon which the new electric building is erected, the cost was \$117,725.95 as carried upon the books of the company. We are satisfied that the value is at least \$150,000, and have so allowed it. The total amount, therefore, allowed for value of land is \$215,993.

### *General Structures:*

Upon this item not disclosed separately in the foregoing table there is a difference between the book cost and the wit-

ness's valuation: a difference of \$3,827.01. The company offers some conjectures as to how this difference arises, and says it is probable that some parts of an old building were used. It should have offered evidence instead of conjecture to meet this point.

*General Equipment:*

This includes office, stable, and shop equipment, and the difference between the cost and the appraised value of the witness is \$7,494.31. Without going into details on an item so small as this, we are inclined to believe that the criticism of the company should be accepted and that this sum of \$7,494.31 should be added to the value of the property. It appears that some of the property inventoried, and which the company unquestionably has, does not appear upon the books.

*Sub-station Buildings:*

The amount upon this item which the company thinks should be allowed, in addition to that appearing upon its books, is \$13,997.03. It offers nothing but conjecture to support this contention, and at least one consideration offered by it shows that the examiner has allowed matters which should not have been allowed. Thus, on page 58, as is cited by the company, part of the expense is for tearing down an old building. This is clearly an operating expense and not a charge to fixed capital.

*Electrical Laboratory Equipment and Other Tangible Electric Capital:*

The difference on these items is \$5,210.63. It is claimed that the books do not represent all the property in existence which is used by the company in the public service. We are inclined to think that this is correct, and therefore this additional sum of \$5,210.63 should be allowed.

*Arc Lamps:*

The company says: "The difference in this account amounts to \$34,324.26. With the exception of an item of \$2,827.50, there is no valuation given for the cost of the installation of 5,293 arc lamps at present in use." This is correct in a sense, although incorrect as to its application to the case, for the reason that the cost of installation is put in the cost of Overhead Distribution System.

This different allocation of the cost of installation is said by the company to account for about \$4,000 of the difference. It then remarks: "The balance is caused by the low price per lamp obtained from the books on account of an exchange of old lamps made with the manufacturer"; and it adds some comments thereon.

This matter of arc lamps has been carefully looked into, and as hereinbefore shown, the difference does not arise from the low price allowed for the old lamps exchanged. The transaction which the company evidently had in mind was one of the purchase of 3,000 arc lamps for street lighting in 1903, and as above stated, it values those lamps at \$21.70 each. As matter of fact, the manufacturer originally asked but \$18 each for these lamps, and the purchase was a matter of considerable negotiation. There was first deducted from the price 10 per cent., and then an arbitrary deduction of one dollar per lamp, so that the final price reached was \$15.20 per lamp; and then for reasons which the company can easily ascertain from correspondence, there was a further deduction made which amounted to \$5,000. The following statement shows just how the cost of \$13.53 1/3 per lamp was arrived at:

3,000 arc lamps at original base price.....	\$18.00	
Less 10 per cent.....	1.80	
	<hr/>	
	\$16.20	
Less arbitrary deduction.....	1.00	
	<hr/>	
	\$15.20	
Less cash rebate of \$5,000 on 3,000 lamps.....	1.67	
	<hr/>	
COST PER LAMP.....		\$13.53 1/3
Total original cash payment.....	\$42,000.00	
Plus allowance of \$1.20 each for 3,000 old open arc lamps returned.....	3,600.00	
	<hr/>	
	\$45,600.00	
Less cash rebate.....	5,000.00	
	<hr/>	
3,000 lamps for.....	\$40,600.00	
	<hr/>	
PRICE PER LAMP.....		\$13.53 1/3



We perceive no reason for increasing the amount over the book cost, and the company by referring to its own records can easily determine whether this is right or wrong.

*Sub-station Equipment:*

Under this head a storage battery is carried upon the books of the company at \$77,499.31, and this amount appears in the examiner's report. The company claims the battery to be worth \$90,000.

The facts are that the company had an old battery which it was carrying on its books at \$77,499.31. In the year 1911 it entered into a contract with the Electric Storage Battery Company to replace the old battery with a new one for a cash payment of something over \$60,000, and the constructing company to be entitled to all the old materials in addition to the above mentioned payment. As a result of this transaction the company did not change the sum at which it was carrying the battery upon its books. It however considers that the battery is worth \$90,000, which is \$12,501 in excess of the book cost. This matter was the subject of some contention in the oral evidence; and as a result of the whole situation, but without discussing it further, we think that it will be reasonable to add this sum of \$12,501 to the book valuation of the property.

*Underground Distribution System:*

The examiner deducted from the cost of this system the sum of \$8,079.65 for commissions paid in connection with the underground conduit system. This deduction should not be made unless the services claimed to have been rendered for which the commissions were given were of no value. The company says in its memorandum: "It is a fact that the company has had its work done very economically as a result of the superintendence which has been given it"; and this contention appears to be justified by the cost of the system. Therefore this sum should be restored to the cost of the property.

This is as far as it is necessary to pursue the criticisms of the company in detail. There is a very considerable criticism upon the costs as disclosed by its own books of the

distribution systems, both overhead and underground. It does not question that the examiner has correctly reported the facts as disclosed by the books, but it presents the argument that it is probable that a large amount of the labor cost was charged to repairs, and hence went into the operating expenses rather than to cost of capital: in other words, that its foremen and bookkeepers allocated a part of the real cost to operating expenses when they should not have so done.

It gives an elaborate table showing the repair costs from August 1, 1892, to December 31, 1908, and claims that upon their face they show that they are excessive for a plant of the size of that owned by it.

There should be no question raised as to the allocation of these expenses since the 1st day of January, 1909, at which time the Uniform System of Accounts was put in operation, and we do not understand that the company raises any, its criticisms being confined to installations made and work done prior to that date.

In determining whether the company's contention is correct, we have several matters to aid us: (1) ratio of operating expenses to earnings before and after January 1, 1909; (2) general observation of the books with reference to the care in handling details as to distribution between capital and operating expenses; (3) difference in unit prices used by the company's witness and those disclosed by the books; (4) the inadequate explanations made of the difference by the company, which certainly has more knowledge of the facts than anyone else; (5) failure of the company to avail itself of data at its command to test the correctness of its theory as to the cause of the discrepancy.

The difference in unit prices shown by the books and vouchers of the company and those adopted by the witness really explain the greater part of the difference. As to the ratio of operating expenses, if the company's theory is correct, that ratio should have been much greater prior to January 1, 1909, than after. An examination has been made as to the fact, and the following table shows the results from July 31, 1893, to December 31, 1911:

PERIOD ENDING	OPERATING REVENUE	OPERATING EXPENSES	OPERATING RATIO
	<i>Dollars</i>	<i>Dollars</i>	<i>%</i>
July 31, 1893.....	402,485.41	226,662.17	56.40
July 31, 1894.....	403,664.93	205,117.55	50.75
July 31, 1895.....	406,076.69	197,074.51	48.50
July 31, 1896.....	411,515.35	182,587.38	44.40
July 31, 1897.....	398,885.94	182,495.77	45.72
July 31, 1898.....	404,154.83	198,089.06	49.05
July 31, 1899.....	404,840.97	205,473.41	50.70
July 31, 1900.....	439,521.16	200,224.01	45.57
July 31, 1901.....	507,966.52	212,103.07	41.75
July 31, 1902.....	567,799.22	249,460.95	43.90
July 31, 1903.....	566,937.66	262,194.48	46.25
July 31, 1904.....	653,088.81	267,293.94	40.85
July 31, 1905.....	736,606.77	305,140.10	41.45
July 31, 1906.....	794,952.19	343,007.56	43.23
July 31, 1907.....	835,581.76	397,281.44	47.50
July 31, 1908.....	927,761.30	435,594.86	46.95
Dec. 31, 1908.....	414,145.04	200,196.02	48.30
Dec. 31, 1909.....	967,455.53	488,878.26	50.51
Dec. 31, 1910.....	1,085,311.63	565,627.46	51.15
Dec. 31, 1911.....	1,213,139.20	630,961.34	52.00
<b>TOTALS</b> .....	<b>12,541,890.91</b>	<b>5,955,463.34</b>	

A glance at the operating ratios prior to the year 1909 shows that they were very much less, except for two years at the beginning of operations and the year 1899, than they have been since January 1, 1909. This fact is not considered to be conclusive, but it certainly has its weight when we come to conjecture in determining this question.

Such summaries of repairs as are presented by the respondent are so general in their nature as to be of but very little if any use in determining the real facts. The summary stops with the year ended December 31, 1908. The company fails to take into account that the repairs for the year 1911 were \$60,770.34, which amount has been exceeded but twice in the existence of the company, and which, if the accounts of the company were correctly kept, includes repairs only and nothing which properly should have been charged to fixed capital. It also failed to call attention to the fact that the repairs for the year 1910 amounted to \$42,341.79, which is above the average for the entire period of the operations of the company. Such variations, how-

ever, from year to year, are not the basis of any proper deduction. Thus the repairs for the year ended December 31, 1896, were \$41,633.37 according to the company's tabulation, while for the year ended December 31, 1897, they amounted only to \$34,287.83. For the year ended December 31, 1899, they reached only the sum of \$27,915.41. From such results as these anything can be guessed; and if the company had been able to show by a review of its vouchers for any one year that a considerable amount had been included therein for repairs which properly should have been charged to capital account, the situation would have presented an entirely different aspect.

### VALUE OF FRANCHISE.

It is a fact that the respondent has a perpetual franchise covering all the streets and public ways of the City of Buffalo. This franchise was acquired in the purchase from the Brush company and the Thomson-Houston company of the fixed capital and franchises of those companies.

It is not quite clear what position the respondent takes concerning this franchise, as to whether it should be treated as an item of property having a value upon which the company is entitled to a return, or not. At page 39 of its brief it indicates three possible values, as follows:

Reproduction value new, with additions, etc.....	\$6,166,140
Commercial value .....	5,948,600
Net earnings value .....	5,750,000

In none of these valuations does a valuation appear for franchise, but upon pages 29-33 of its brief it argues that the franchise has value, and concludes as follows:

If it has a value, or if that value was validly agreed upon and capitalized under the laws in force when it was done, such value can not by statute be excluded from the total valuation upon which a public service corporation is entitled to a return.

In another place in the same brief the following language is used:

All three of the bases for the valuation of franchises in that case are present in this case, viz:

(a) The franchises were included in the valuation in strict compliance with the then existing laws of the State.

(b) The agreement under which the franchises were included in the "aggregate value" of the properties, franchises, and rights consolidated has always been recognized as valid; otherwise it must be assumed that some attack upon it would have been made by some public authority during the twenty years during which it has continued.

(c) The stock has been dealt in for more than twenty years on the basis of its validity; and to declare the basis of it invalid after such a lapse of time would be to do great injury to innocent investors who have relied and had the right to rely upon the validity of an issue of stock made strictly in accordance with the law.

It must be assumed from the foregoing language that the respondent expects that some franchise value must be allowed it in fixing the rate. It recognizes that the stock and bonds which were issued to the Thomson-Houston and Brush companies amounted to \$3,000,000; that the physical property had a value of practically \$1,100,000, thus leaving \$1,900,000 to be accounted for in intangibles of some character.

The respondent has made no proof whatsoever regarding this alleged franchise value, but if it claims any return thereon it relies wholly upon the argument presented in its brief.

It is true that a great deal has been said about franchise value in rate cases. It is unnecessary at this time to review what has been said. There is one paramount fundamental consideration which, in the judgment of the Commission, is conclusive upon the whole matter, and the facts upon which it is based are as follows:

It does not appear that any sum whatever was ever paid by the respondent or by its predecessor companies for this franchise. It was a gift by the City of Buffalo to the predecessor companies, and consists wholly in permission to use the streets of the City for the placing of poles, stringing of wires, and placing of conduits. The company was given this privilege, without which it could not transact its business. It is true that the franchise is of value to the company, and that without the franchise the remainder of its property would not possess any exchange value as an electric plant, or such as might be given it when coupled with the expectation that a franchise would be given. If it were entirely certain that no franchise would be given, the property would have no exchange value except for purposes other

than the distribution of electric energy. The franchise gives life to the enterprise and makes possible a return upon the capital which has been sunk in it. It makes possible a sale of the concern to other investors if those constructing it desire to part with their interest. It is indispensable to the conduct of the enterprise. All of these considerations, however, entirely fail to show that the public should pay a return upon some amount assumed to be the value of the franchise. The investors did not put the franchise into the enterprise. That was done by the public.

The whole truth lies in one sentence: If the franchise, which was a gift from the public to the company, should be made the basis of a money return, the practical result would be that the public would have to pay money to the company because it had given the company the right to occupy the public streets with its plant. This is the whole of the matter, and when thus stated, there is but little more to be said.

The City of Buffalo as a municipality has given the company a right to place its poles and string its wires in the streets for the purpose of lighting the streets. The argument that the franchise thus given has a value for rate making purposes comes just to this: that the City must annually pay to the company, in addition to all just amounts for operating expenses, taxes, amortization, and a proper return upon the investment made by the stockholders, a further sum because of the right which the City itself had given to occupy its streets. The company desires to make money by lighting the streets. It can not so do without having its plant in the streets. The City consents that the plant may be put in the streets, and the company then desires the City to pay it a large sum because it has consented to such use of the streets. If the franchise was of the value of \$2,000,000, as seems to have been assumed in the consolidation, and the proper return upon this is 6 per cent. per annum, the public in the City of Buffalo would be required to pay \$120,000 each year to the respondent for no reason whatsoever except that it had given the company the right to occupy the public streets with its plant. We are not prepared to say that either the municipality of Buffalo or

the customers of the company residing in Buffalo should pay anything to the respondent on this account.

**THE CONTRACT WITH THE GENERAL ELECTRIC COMPANY OF  
SCHENECTADY.**

It has been hereinbefore pointed out that in the year 1892, shortly after the consolidation, the respondent issued to the General Electric Company of Schenectady its common stock to the amount of \$600,000 and its bonds to the amount of \$100,000, which stock and bonds are now outstanding and form a part of the capitalization of the company. The precise position of the respondent regarding this issue of stock and bonds is not quite clear. At page 28 of its brief it uses the following language:

We have pointed out under the heading "Superseded Property" the advantages secured to this company by that contract, and while it would appear that with the expiration of patents and the general expansion in the way of manufacturing electrical apparatus, this contract is now of little value, yet we maintain that it was a contract of great advantage when entered into and for a period of years thereafter, and as \$700,000 par value of our securities have passed out and are now in the hands of innocent investors, these facts should be taken into account at least in arriving at the cost of the company in establishing the business.

On page 36 it says with reference to this contract:

Its value has practically disappeared, but the securities have passed into the hands of innocent holders. We submit under these circumstances it would be unfair to ignore this contract and the securities issued upon the faith of it in arriving at the fair value of our property. The contract was entered into in good faith. It was deemed for the best interests of the company. It apparently was a form of contract usual in this business. It undoubtedly helped to establish the company as a successful concern.

Contract D with the General Electric Company of Schenectady is altogether too long to admit of analysis at this point. A brief description of its terms is as follows:

It contemplates the sale by the Schenectady company to the Buffalo company of such apparatus as the latter may need from time to time, and the 8th paragraph of the agreement is in the following language:

The licensor (Schenectady company) hereby covenants to sell to the licensee (Buffalo company) from time to time for cash or on such terms as may be agreed upon, such apparatus as at the time may regularly be made by or for the licensor, and may be needed by the licensee for its use in said territory for central station lighting and stationary motive power purposes, at the lowest current prices of the licensor to its other licensees under this form of contract and license, for similar apparatus purchased in like quantities.

The Schenectady company also agrees that it will defend all suits brought against the Buffalo company for violation of patents; that it will not sell to any person or persons other than the Buffalo company any apparatus for use in central station lighting in Erie county except in Tonawanda, nor any central electric motors to be operated from central lighting or power station, nor any generators for operating such motors therefrom, so long as the Buffalo company shall faithfully observe the contract. There are also other provisions of minor importance under which the company may have derived some advantage. Thus the 14th clause provides that the Buffalo company shall have all the profits from time to time made by the Schenectady company on the sale of incandescent lamps to isolated lighting plants in the territory of the Buffalo company, namely, Erie county excepting Tonawanda, less 10 per cent. of the selling price of the Schenectady company, which percentage it shall receive for sale; the word "profit" meaning therein the difference between the "price now current to the old Edison licensees and said selling price of the licensor (Schenectady company)".

It is true that the respondent gave evidence by an expert witness tending to show that this contract was of great value to the company. It is also true that, although the company has been under the same management from its organization in 1892 down to the present time, not one of its officers or employees was called to show the actual advantages, if any, which were realized from this contract. The price paid to the Schenectady General Electric in stock and bonds was \$700,000. The first and most important question would be, how much apparatus was bought under the terms of this contract by the Buffalo company from the Schenectady company? No evidence was given upon this point, whatever.



An estimate, however, has been made by the Commission, and it does not seem to be probable that property of over the cost of \$900,000 has been bought under this contract. If this estimate is correct, it would seem that there was not much advantage in the contract arising from the purchase of the apparatus. It does not appear that any suits were brought against the company in the use of this apparatus which the Schenectady General Electric defended. It does not appear how much money, if any, was paid to the Buffalo company as "profits" on the sale of incandescent lights. In short, there is nothing but a speculative opinion as to the advantage which this contract was to the respondent, and it is only just to say that if the Commission thought it worth while to speculate upon this point, the conclusion would not be the same as that reached by the witness.

The foregoing considerations, however, do not go to the root of the matter. The return which the public should pay to a corporation for service is based upon one set of considerations. How the return so paid should be divided among the shareholders is another matter and one in which the paying public has no direct interest. The corporation is entitled to a fair return from the public upon the efficient sacrifice it has made in performing the service, upon the fair value of the investment made for that purpose, and to no more.

The certificates of stock issued to the shareholder do not in the least determine the fair value of the investment. They are not a measure of the efficient sacrifice made. They are mere title deeds, as it were, to the investment. There can not be a just return upon both the investment and the piece of paper which shows title to the investment. The function of the stock is not to determine how much the public shall pay, but how what the public has paid shall be divided among the shareholders. The value of the stock is not determined by the figures printed upon the certificates, but by the amount it receives upon a division of what the public pays. The value is rarely par. If the stock receives a large sum as dividends, the value rises; if a small sum, the value falls.

If the amount the public should pay for the service were to be determined by the amount of stock issued, the result would be that the body having the power to determine the amount of stock would fix the return, and all consideration of the fair value of the investment used in the public service would go for naught. A stock dividend of say 100 per cent. doubles the amount of the stock, but has no proper effect upon the rate the public pays. Such dividend neither increases nor diminishes the fair value of the property used in serving the public. It merely rearranges as between the shareholders the form and number of the pieces of paper showing their rights between themselves to the net earnings and to the property itself if ever divided amongst them.

If the Buffalo company was fairly entitled to a net return of \$100,000 before making the contract with the Schenectady company, how did the making of that contract justify increasing the return to be paid by the public \$50,000? What did the Schenectady company put into the enterprise which was of service or benefit to the public to the extent of making it just for them to pay 50 per cent. more for the service received?

If the shareholders of the company made a contract with the Schenectady company which was advantageous to them as shareholders, they had an undoubted right to divide the net earnings of the company with the Schenectady company upon such basis as they liked; but for a supposed advantage to them, what justification is there for keeping their return from the public the same and increasing the amount the public pays in order to give something to the Schenectady company?

There has grown up, for some reason, a very peculiar and illogical notion with reference to the protection of so-called innocent investors in the stock of a public service corporation which deserves a little attention at this point.

The underlying conception upon which this notion is based is that the return the public is to pay is based upon the amount of stock and not upon the amount of the investment: that it should be reckoned upon the figures printed upon the title deed to the property rather than upon the

value of the property itself. There is no law justifying any such view, and certainly no equity or justice. Once it is clearly apprehended that a person buying stock in such a corporation is buying only a right to a certain proportion of the dividends, the confusion disappears and the whole matter is put upon a just basis. The amount of the dividends depends wholly upon the business success of the corporation, and no one pretends that there is any principle justifying an exaction from the public of more than a fair return upon the value of the property used in the public service.

If a purchaser is foolish enough to pay more for the stock of such corporation than would be justified by the reasonable amount of dividends, there is no principle of equity which requires that the loss should be borne by the public, but every principle of equity and law requires that it should be borne by the person making the investment. No one at the present time, in any careful consideration of the subject, attempts to maintain that the public should pay a return upon the stock. Everyone concedes that the return should be upon the investment; and yet from time to time we are met with a plea to protect the stock which is the title deed and disregard the investment which is the matter of substance.

#### **"GOING CONCERN" VALUE.**

The respondent makes a claim for "going concern" value of \$1,200,000. In the Cataract case we considered the subject of "going concern" value in great detail, and there reached the conclusion that those matters which commonly constitute what is called "going concern" value should not be allowed as a part of the property of the company upon which the stockholders would be entitled to a return during the entire existence of the corporation. We also found that a situation might exist in which the company had incurred expenses, or had deferred profits at the commencement of business during the unprofitable period of operation which sometimes follows the establishment of a new business, which would entitle it fairly and justly to a return from the public in increased rates during such period of time as might be found necessary reasonably to reimburse the company for these matters.

Upon this view it is essential in fixing the rate of any company to examine into its past history and ascertain first if any of the claimed expenses were actually incurred; if any profits or returns to which the company was fairly entitled were not received; and if either or both are found to exist, then the inquiry should proceed further into an examination of the question whether the stockholders have been properly reimbursed. Such an inquiry is very proper in the present case.

We should first inquire what the stockholders have actually put into the business in the way of tangible property or money, and upon this the evidence, clear and undisputed, the value of the tangible property as found in the examiner's report, and practically admitted by the company, in 1892, at the time of the consolidation, was \$1,118,113. There has been no stock sold for cash which has been put into the business above the sum of \$275,000. The proceeds of all other stock are shown to have been used in other directions. How much was actually realized for this stock does not appear, but it will be assumed that it was sold at par. No bonds were sold and the proceeds put into the business subsequent to the organization prior to 1907 except to the amount of \$316,000. In July, 1909, this Commission authorized an issue of bonds for new construction amounting to \$243,000; and in June, 1911, bonds to construct the new building to the amount of \$570,000. This includes everything that has been put into the business either from stockholders' money or from the proceeds of bonds, and the aggregate is \$2,522,113.

The total value of the property used in the public service as herein found is \$3,194,159. Some land not in the public service which is not included in the foregoing is of the value, according to the evidence of the company, of \$39,000. It has also sold some property formerly in the public service and has a mortgage thereon to the amount of \$26,000. Its total assets at the present time are, then, \$3,259,159. It follows from this that the company now has in the business \$737,046 which was derived from the earnings of the company, that is, paid for by such earnings. Since the organiza-

tion of the company to December 31, 1911, the company has paid cash in dividends \$2,235,355. It has paid in interest \$2,314,516, being a total of \$4,549,871, which sum is returns received from the public for services rendered. This added to the amount remaining in the property shows that the company has received from the public a total of \$5,286,917.

Assuming that the stock sold for cash was all put into the business at the time of the organization of the company, and that the tangible property to the amount of \$1,118,113 was in service at that time, and giving this tangible property a return of 8 per cent. per annum for  $19\frac{1}{2}$  years to December 31, 1911, those returns would amount to \$2,173,256. Assuming that the bonds to the amount of \$316,000 were sold at the time of the consolidation, and the proceeds used in the business of the company at that time, these bonds were paid interest at 5 per cent. for  $19\frac{1}{2}$  years, and this interest is \$309,100. The interest on the bonds for \$243,000 for  $21\frac{1}{2}$  years at 5 per cent. would be \$30,375; and on the bonds to the amount of \$570,000 for  $11\frac{1}{2}$  years at 5 per cent. the interest would be \$42,750. The aggregate of these payments by the company as interest on borrowed money invested in the business, and on tangible property invested in the business, at the rate of 8 per cent. for the property and 5 per cent. for the bonds, exactly what was paid, would be \$2,555,481. The total amount received as shown above was \$5,286,917, and if we deduct the returns on the tangible property put in by the stockholders and the interest paid on the bonds which were invested in tangible property from this, we have left the sum of \$2,731,436 which the company has received in  $19\frac{1}{2}$  years as return on intangibles. This return may be called promoter's profit; it may be called a return for risk incurred, for anything whatsoever, except that it can not be called a return for expense incurred or profits deferred, since they are fully taken care of in the previous calculation. The following is a tabulation of the foregoing matters for the sake of clearness:

Total value of property used in public service, as found by	
Commission .....	\$3,194,159
Land not in public service .....	39,000
Mortgages on property sold .....	26,000
	<hr/>
	\$3,259,159

**Tangible property or money put into public service:**

Tangible property taken over in 1892.....	\$1,118,113
Stock sold for cash .....	275,000
Bonds sold for cash prior to 1907.....	316,000
Bonds for new construction (July, 1909).....	243,000
Bonds for new building (June, 1911).....	570,000
	<hr/>
	\$2,522,113

**DIFFERENCE EQUALS RETURNS LEFT IN BUSINESS..... \$737,046**

**Total received by company since organization to December 31, 1911:**

Paid in dividends .....	\$2,235,355
Paid in interest .....	2,314,516
	<hr/>
	\$4,549,871
Left in business .....	737,046

**TOTAL RECEIVED ..... \$5,286,917**

**Returns on**

(a) Tangible property .....	\$1,118,113
Stock sold for cash .....	275,000
	<hr/>
	\$1,393,113
for 19½ years at 8%.....	\$2,173,256
(b) On \$315,000 bonds 19½ years at 5%.....	309,100
	<hr/>
	\$2,482,356
(c) On \$243,000 for 2½ years at 5%.....	30,375
(d) On \$570,000 for 1½ years at 5%.....	42,750
	<hr/>
	\$2,555,481

**TOTAL RECEIVED ..... \$5,286,917**  
**Deduct returns on tangible property as above ..... 2,555,481**

**RETURNS ON INTANGIBLES ..... \$2,731,436**

This is only one way of looking at the matter. It is, however, perfectly fair and just. From this aggregate return of \$2,731,436 it might be just to say that the depreciation from

the existing physical property should be deducted, and this may be assumed to be anything up to \$700,000, and even at that maximum it would leave a return of \$2,000,000 which somebody has received because of these intangibles.

Upon this view, it would seem that the stockholders or the promoters or someone had received a return fully commensurate for all matters connected with attaching of business which have been hereinbefore discussed, and that hereafter the stockholders should be content with receiving a just and reasonable return upon the value of the property which they now have in the public service, and this without creating any "phantom" property and assuming that it is something upon which the public ought to pay a return.

In addition to what is said in the case of The Cataract Power and Conduit Company regarding the practical working of the "going concern" value theory as a means of compensating the company for the cost of attaching business, it may be well to show how the same matter works out in the case of the Buffalo General Electric Company.

It should be borne in mind that the company is claiming a "going concern" value of \$1,200,000, and this it places principally upon the ground of cost of attaching business. Such is the theory advanced by various of its witnesses and apparently favored by counsel in their brief. One theoretical method of arriving at such cost is to assume that it is equal to one year's gross receipts of the company. Just what year should be taken is not clear from the evidence, but in this case we are apparently relegated to the year 1911, in which the gross receipts were \$1,213,139. If the amount claimed is not based upon this theory of one year's gross receipts, the coincidence between the two sums is somewhat remarkable.

The Commission has on file reports from the company for the years ended June 30, 1906, to December 31, 1911, both inclusive, and it has compiled from those reports a table showing the expense incurred by the company for attaching business during the six years named; also the operating revenues, the operating income, and the net increase in fixed capital during that time. The following is such table:

PERIOD	EXPENSES FOR ATTACHING BUSINESS	OPERATING REVENUE	OPERATING INCOME	NET INCREASE IN FIXED CAPITAL
Year ended June 30, 1906.....	\$13,367	\$826,833	\$383,572	\$102,208
Year ended June 30, 1907.....	19,184	861,025	375,258	113,886
Six months ended December 31, 1907.....	14,663	453,932	212,439	67,105
Year ended December 31, 1908.....	22,811	891,477	413,983	177,002
Year ended December 31, 1909.....	30,976	967,456	367,733	109,278
Year ended December 31, 1910.....	26,073	1,085,312	419,788	234,391
Year ended December 31, 1911.....	24,811	1,213,139	459,743	309,621

Analyzing this table, we find that in the year ended December 31, 1911, the operating revenue was increased over the operating revenue from the year ended December 31, 1910, by the sum of \$127,827. If the theory of one year's gross receipts represents the "going concern" value, then the sum of \$127,827 is to be added to the fixed capital of the company as a sum upon which the people of Buffalo must pay a return of not less than 6 per cent. so long as the company continues in business. The expenses incurred for attaching business in the year 1911 were actually \$24,811, and all of these expenses were paid by the City of Buffalo, being charged to the operating expenses of the plant.

The operating revenue for the year ended June 30, 1906, was \$826,833. For the year ended December 31, 1911, such revenues were \$1,213,139, an increase of \$386,306. The total expenses incurred by the company in the period covered for attaching business were \$151,885, all of which were paid by the consumers, and not one cent of which was taken from the stockholders unless it be said that their dividends were reduced thereby. Such a claim as this would be rather futile, for the reason that the decision of the Commission in this case holds that their profits are now excessive and presumably have so been during the entire period.

The foregoing figures dissipate any claim that there is any reason in this case for reimbursing the stockholders of the company for expenses incurred or profits deferred.

#### THE NEW ELECTRIC BUILDING AT GENESEE AND HURON STREETS.

Prior to the Fall of 1912 the respondent occupied rented offices. Several years since it purchased a tract of land at Genesee and Huron streets upon which were situate certain



old buildings. These it caused to be torn down, and erected on the land a handsome structure for offices and storage purposes and work rooms. A part of the building is designed for rental for offices and other purposes, and is not in use or needed at the present time, at least in the service of the public. The City claims that no part of the land or building should be included in the property used in the public service, and this position is taken partly on the ground that by stipulation the date to which the calculations and evidence in this case should be treated was December 31, 1911, at which date neither the land nor the building was in use in the public service, the building having been finally completed and thrown open to use about October or November, 1912.

As to this ground of objection we feel that it would be unjust to the respondent not to allow any part of this property to receive a return from the public upon the ground that for convenience in the trial of the case the date December 31, 1911, was assumed as the one to which the evidence should relate. If any calculations are needed to correct any maladjustment, as it were, because of taking in this land and building or some part thereof, they can readily be made.

The situation is confessedly somewhat difficult, owing to the fact that a part of the entire property is used in the public service and another part is not. The question for determination is what part is fairly used in the public service; and whatever its value may be, that should be included in the value of the property of the company upon which it is entitled to a return.

The facts of the case are as follows: The purchase of the land and sundry expenses therewith cost the company the sum of \$117,725.95. The land at the present time is claimed by the City to be of the value of \$100,000, and by the respondent \$150,000. We are satisfied that the estimate of the respondent in this respect is more nearly correct, and we are disposed to believe that \$150,000 is a fair value for the land without any buildings. The cost of the building to January 31, 1913, was \$479,925. The respondent claims that there are some further bills to pay in connection with it, but we have no sufficient proof in relation thereto to

justify a finding thereon, in view of the fact that the respondent itself states that the exact amount is not known and that there are some adjustments to be made in the claims made by the contractors for extras. This brings the total value of the land and building up to \$629,925.

A portion of the building as above stated is designed for renting. A part of the offices are already rented for about \$21,000 or \$22,000 per annum. Still other portions are not rented, and if rented at the same rate would produce a revenue of approximately \$13,000. The rental value of the portion designed for renting may, therefore, be fairly assumed to be \$35,000 per year. The operating expenses of the building, however, for heat, elevator service, janitor service, and the like are estimated to be about \$2,000 per month, or \$24,000 per year. The rent which the company formerly paid and which ceased by reason of the occupancy of the new building was \$5,500 a year. We think that the proper disposition of the matter which is more nearly just to the public and to the respondent than any other which has been suggested, is to allow the total sum of \$629,925 as a part of the property in the public service; charge operating revenues with \$35,000, the rent actual and potential; charge expenses of operation with \$24,000; credit expenses of operation with \$5,500, the rental which has been discontinued. The net result would be a 6 per cent. return on the investment. The charge to the public would be increased \$37,795. Operating expenses would be decreased by \$16,500, which deducted from the return on the investment would leave \$21,295 as the rental paid by the company for its use of the entire building, which is a 6 per cent. return on \$354,916. We do not think that any objection can reasonably be raised to this. The company is fairly entitled to occupy its own premises, and in constructing its building it was required to take into consideration future needs and the enlargement of its business. The building is a credit to the City as well as to the company, and the whole question should be treated with perfect fairness.

THE CONTRACT FOR POWER WITH THE CATARACT POWER AND  
CONDUIT COMPANY.

The respondent procures practically all its power from The Cataract Power and Conduit Company. A small portion is taken from the Niagara, Lockport and Ontario Power Company. The amount taken from The Cataract Power and Conduit Company in 1911 was 40,817,617 kilowatt-hours, for which there was paid \$319,322.44, at the rate of \$25 per horsepower. There was also purchased from the Niagara, Lockport and Ontario Power Company 1,176,800 kilowatt-hours, for which there was paid \$16,825.24. It becomes of great importance in this case to ascertain whether the cost of energy to the respondent is excessive and should be reduced. This question was presented in the Cataract case, and we found in that case that the price charged by that company was unreasonable and excessive and should be reduced 28 per cent.: 28 per cent. of \$319,322 is \$89,410. Based upon this finding in the Cataract case, the cost to the respondent for energy is excessive by this amount, and therefore it should be deducted from its operating expenses in endeavoring to establish the true amount of those expenses for the year 1911.

If the price charged by the Cataract company for energy, namely \$25 per horsepower, were fixed as is usual upon a schedule rate, the service terminable at the pleasure of either party, this would end the matter and no further discussion would be needed; whereas a most interesting question is presented by reason of the existence of an alleged contract between the two companies for power which is not terminable, according to the terms of said alleged contract, for many years.

In the Cataract case we held that there was no reason for attempting to question or disturb a contract between that company and the International Railway Company. The case of the contract with the International Railway Company is, however, clearly distinguishable from that of the contract between the respondent and the Cataract company. The case of the latter contract, however, demands a statement and some discussion.

The original agreement between the two companies was dated October 1, 1896, was to continue for a term of 35 years from November 15, 1897, and provided for the delivery of not less than 3,000 electric horsepower 24 hours per day for every day in the year, at substantially \$33 1/3 per horsepower per annum. There were modifications to this price which it is unnecessary to state at this time. An additional agreement was made under date of November 2, 1896, modifying or supplementing the agreement of October 1, 1896. These contracts remain nominally effective for a period of years, but to what extent they were departed from or modified in actual practice does not appear in evidence.

Later on, in about 1902, negotiations were instituted for a modification of the contracts. The history of these negotiations is not particularly material, but at some time there was prepared a contract which is dated July 1, 1908. During the progress of the proceedings the City called upon the respondent for a copy of the contract existing between it and the Cataract company, and this agreement, dated July 1, 1908, was produced as such contract and a copy thereof delivered to the City, and such copy was introduced in evidence on the 23rd day of September, 1912, as the City's exhibit No. 11. The president of the respondent, when upon the stand on that date, being asked if this alleged written contract was in force between the two companies, answered, "Contractually, yes; operatively, no." The copy of the alleged contract thus introduced in evidence contained no signatures, and attention being called to this fact it was shown that the contract had not been in fact signed, and that the arrangement between the two companies thus rested only in parol.

Later on in the proceedings it appears that on or subsequent to the 23rd day of September, 1911, at which time attention was called to the fact that the contract had not been signed, the contract was signed by the executive officers of the two companies, notwithstanding the fact that complaint had been made against the rates charged by the respondent a long time prior thereto and the trial of the issues raised by such complaint and the answer thereto had been commenced.

It is the contention of the City that all of the contracts above described between the two companies are void and are not binding upon this Commission in fixing the rate to be charged by the Cataract upon the one hand and paid by the respondent upon the other. As against this, the respondent claims that the contract dated July 1, 1908, is in force and effective; and that if it were not so, necessarily the contract of October 1, 1896, as modified and supplemented by the agreement dated November 2, 1896, is in force, which requires the payment by the respondent of \$33 1/3 per electric horsepower.

This contention between the parties brings under consideration three clauses contained in the supplemental agreement of November 2, 1896, which have not been heretofore detailed. These clauses are as follows:

*Third:* During the term of this contract and except as required by the terms of its said franchise from the City of Buffalo, Conduit Company shall not furnish or sell, nor will it authorize any one else to furnish or sell to any other company or person electrical power for use in municipal or domestic lighting within the present city limits of the City of Buffalo; and for any breach of this stipulation at any time Electric Company may suspend its taking of power or terminate this contract or recover damages; and all these cumulative remedies shall continue notwithstanding any prior waiver thereof.

*Fourth:* During the term of this contract, Electric Company will not, within said City, take, use, sell or employ any electrical energy for the purposes above mentioned, developed from the water of Niagara River, excepting that developed from the turbines of The Niagara Falls Power Company, at Niagara Falls, and delivered by Conduit Company, except upon failure of Conduit Company sufficiently to provide such energy when required under the terms of this contract; and except Electric Company may produce power by stream or otherwise within said City for its corporate purposes; and for any breach of this stipulation at any time, Conduit Company may suspend its supply of power or terminate this contract or recover damages, and all these cumulative remedies shall continue notwithstanding any prior waiver thereof.

The respective successors or assigns of the parties are declared to be entitled to all the rights, advantages and forfeitures and bound by all the obligations, duties and conditions of and remedies against, their original parties respectively, as herein set forth, unless otherwise expressed.

*Fifth:* Conduit Company, in consideration of the premises and of the above agreements, will credit and rebate to Electric Company for the electrical horsepower paid for by Electric Company to Conduit Company during the year, a sum equal to thirty per cent. of the price paid by it, from time to time, payable under said former contract for electrical horsepower exclusive of net receipts of sales from other than lighting purposes;

such credit, or rebate, to be made quarterly on the fifteenth days of March, June, September, and December in each year, on which days payments are to be made to Conduit Company under the above mentioned agreement of October 1, 1896, and to be deducted from the sums severally payable on such successive days respectively as above provided.

The alleged agreement dated July 1, 1908, which the respondent claims to be the existing contract, also contains two articles of which the following is a copy :

Article VII. It is understood and agreed that the electrical energy deliverable hereunder is to be used, sold and distributed by the Electric Company within the said City of Buffalo and not elsewhere, for purposes only of municipal and commercial lighting and for power where the maximum rate of use by any one customer is not in excess of sixty (60) kilowatts; and the Electric Company covenants and agrees that during the term hereof, except with the written consent of the Conduit Company (1) it will not use or authorize or permit any person, firm or corporation to use any part of the electrical energy deliverable hereunder for any purpose other than hereinbefore in this Article specified; (2) it will not purchase, take, generate, use, sell, transmit or distribute any electrical energy other than the electrical energy supplied it by the Conduit Company hereunder, except upon failure of the Conduit Company sufficiently to provide such electrical energy when required under the terms hereof; and (3) in addition to the payments by it to be made under the provisions of Article IV hereof, it will pay the Conduit Company monthly on the 15th day of each month during the term hereof the rate of two dollars seventy-nine and three-tenths cents (\$2.793) per kilowatt of the maximum rate at which any electrical energy shall have been purchased, sold, used, transmitted, or supplied by it in violation of any provisions of this Article.

Article VIII. The Conduit Company covenants and agrees that during the term hereof, except (1) with the written consent of the Electric Company or (2) as required by law or by the charter or franchise of the Conduit Company, it will not furnish or sell any electrical energy for use within the said City of Buffalo for municipal or commercial lighting or for power purposes where the maximum rate of use of any one power customer is less than sixty (60) kilowatts; provided, however, that the provisions of this Article shall not be interpreted to prohibit (a) the continuing sale and provision of electrical energy by the Conduit Company to its present customers for the purposes for which such electrical energy is now used, or (b) the incidental use by the power customers of the Conduit Company of a part of the electrical energy supplied them for the purpose of lighting their factories and plants, or (c) the sale and provision of electrical energy to or for the use of manufacturing plants which the Electric Company may not be prepared to furnish electrical energy.

The Conduit Company covenants and agrees to pay to the Electric Company on the 15th day of each calendar month during the term hereof, a sum at the rate of two dollars seventy-nine and three-tenths cents (\$2.793) per kilowatt for the maximum rate at which at any time during the

preceding calendar month it shall have supplied any electrical energy in violation of any provision of this Article.

It appears indisputably from the evidence in this case that neither of the parties has ever faithfully observed any of the contracts heretofore recited; that by arrangement on the part of their executive officers, or in deliberate violation of the terms thereof, both parties have from time to time departed from stipulations therein contained.

It further appears that since the making of the parol agreement evidenced by the unsigned contract of July 1, 1908, the energy delivered by the Cataract company to the respondent has not been billed in conformity to the terms of that agreement. The billing has been and is now at the rate of \$25 per horsepower without the modifications of that price which are specified in the agreement, which modifications have not been hereinbefore quoted, but which can be readily found by reference to the agreement.

It further appears that the parties, after the discovery of the fact that this parol agreement had not been signed, and when the rates charged by the Cataract and the rates charged by the respondent were both in question before this Commission, saw fit to endeavor to perfect this parol arrangement by signing and delivering the written agreement—a clear recognition of the fact that up to that time there was no legal agreement in existence between the companies which was not susceptible to modification by the action of this Commission.

It further appears that the contracts executed in 1896 have long since been waived and abandoned by both parties, and are ineffectual and have not been effectual for years.

The legal questions presented by the foregoing facts are interesting and important. The Commission has weighed them with care and has reached the conclusion that it is at liberty to fix the rates to be charged by the Cataract company and by the respondent without reference to the terms of those alleged agreements. Irrespective of the question of the correctness of this conclusion, the facts detailed in the opinion in the Cataract case and in this opinion show beyond any question that justice, equity, and fair dealing

with the public require that the rate charged for current by the Cataract company to the respondent be reduced as found in the Cataract case, and it is believed that both companies upon a full review of the entire situation will acquiesce in the justice and equity of this conclusion.

For these reasons it is deemed unnecessary to enter upon a prolonged discussion of the legal questions involved, although the Commission entertains no doubt that if the matter were brought before legal tribunals they would reach the same result as has the Commission.

#### GENERAL AMORTIZATION.

The subject of general amortization has been left in most unsatisfactory condition. Until very recently the company has paid no attention to this matter in its accounts. Since the adoption of the Uniform System of Accounts prescribed by this Commission, it has established a fixed sum for depreciation of \$125,000 a year, charging against this the current repairs each year, with the result that in the year 1911 operating expenses were charged with general amortization \$62,614.35. Against this amount was charged the sum of \$19,966.16 for depreciation subsequent to December 31, 1908, on capital retired during the year, leaving a net increase of \$42,648.19 in the reserve accrued amortization of capital, which at the close of the year amounted to \$163,681.36.

No evidence was offered by either party tending to establish the amounts required in the fair administration of the affairs of the company to take care of obsolescence, inadequacy, and wear other than the ordinary repairs to be expected during the year, except as is hereinafter stated. In the multitude of subjects requiring investigation and examination it is not strange that this did not receive more attention. In fact, the whole subject of depreciation and amortization is almost an unknown land in a plant of this character. There are a few general propositions which seem to be reasonably well established, namely, that the treatment which is to be extended varies with the character of the plant and its size. A large plant with various parts





and having for its constituent parts various terms of life, when it has reached a sufficient size can sometimes take care of depreciation in repairs chargeable to operating expenses and does not require the establishment of any reserve. Of course, if the depreciation is taken care of in this manner, it requires investigation to know how much should be allowed for such expenses in the case of the fixing of rates. If we were to assume that this plant had reached that stage, the only guide that the Commission would have at this time would be the repairs and charges therefor which were made during the year 1911 and preceding years; but there is no evidence showing that the usual and ordinary amount was expended during that year for this purpose, neither is it made to appear that there is not a necessity for a reserve to take care of unusual retirements which come from the inadequacy or obsolescence of some large machine. The renewal of poles and many other matters will unquestionably in the future be taken care of by charges direct to repairs, and just how much is needed for this purpose in the rate is not shown by any careful and well considered evidence.

Three of the witnesses were sworn on the part of the company, who testified in very general language that they had looked into the matter and ascertained that the company had established a flat amortization fund of \$125,000 a year; that about half of it was absorbed in general repairs for the year, leaving an amortization reserve of \$62,000, and that they considered this insufficient; that it ought to be at least double that amount: in other words, that the allowance for amortization in the way of repairs and creation of reserve should be substantially \$180,000 to \$185,000 instead of \$125,000.

No detail was given by any of these witnesses showing how this result was reached. The only thing certain about it is that each of them obviously based his estimate upon an estimate of the value of the property which is far in excess of that adopted by the Commission. Without making further comment upon this evidence, it is sufficient to say that the Commission does not adopt it as its guide. The directors of the company have established a rate which has

not been particularly criticized except in the evidence offered by the company. In the absence of any evidence, going into the matter thoroughly and carefully, the Commission does not feel that it would be warranted in increasing the rate heretofore used by the company. On the other hand, the general examination of the case has led to the belief that this amount may perhaps be regarded as too large; but it is better to err upon the side of allowing too much rather than too little.

Under all the circumstances it seems to be best to not interfere with the matter one way or the other, and allow the operating expenses to stand so far as this matter is concerned precisely as they were made up by the company in its annual report for 1911.

This is not a satisfactory disposition of the matter, but much reflection and prolonged consideration induce the belief that it is the best which can be made.

#### UNACCOUNTED FOR ENERGY.

During the year 1911 the respondent purchased electric energy as follows:

Bought of Cataract Power and Conduit Co.....	40,817,617 kw.h.
Bought of Niagara and Erie Power Co.....	1,176,800 kw.h.
<hr/>	
Total energy bought .....	41,994,417 kw.h.
Used by respondent .....	267,960 kw.h.
<hr/>	
	41,726,457 kw.h.
Sold by respondent .....	26,912,240 kw.h.
<hr/>	
Leaving unaccounted for .....	14,814,217 kw.h.
Percentage of kw.h. bought unaccounted for.....	35.2

The foregoing, worked out in financial results, is as follows:

Total paid Cataract Power and Conduit Co.....	\$319,422.44
Paid Niagara and Erie Power Co.....	16,825.24
<hr/>	
Total paid for energy.....	\$336,147.68
35.2 per cent. of this for energy not sold.....	118,323.98

In the transformation and distribution of electric energy there is necessarily a very considerable percentage of loss. The question presented in this case is whether a loss of 35.2 per cent. is excessive and should be reduced by proper

management. It is obvious that the question is one to which the attention of the company should at all times be most vigorously directed. One per cent. in the amount of current purchased in 1911 would have involved a saving of \$3,361.

Considerable evidence was given by both parties upon the question whether this amount of loss was excessive or otherwise. A great deal of this evidence was directed to technical matters which have no proper place in this opinion. The company also applied to a considerable number of companies elsewhere for reports concerning the amount of unaccounted for energy in their practice, load factors, and the like, and copies of the answers, without however disclosing the names of the companies, have been submitted to the Commission for its consideration. It is true that the loss of energy of two companies is hardly ever properly comparable, for the reason that the circumstances under which they operate are different. The load is different, and it is not possible to say that one company's loss is excessive because it happens to exceed that of another company.

We have, however, taken into account all of the evidence given in this case upon this subject, and the above matter submitted by the company, and have interpreted the same by the light of our knowledge of the operations of other companies, and their general conditions of operation as compared with that of the respondent, and we are clearly of the opinion that the loss of the respondent is greater than is warranted by good practice.

Early in the case the president of the company testified that 33.8 per cent. was an excessive loss, and that the loss for the year ended December 31, 1910, which was 38.3 per cent., of course would be still more excessive. He further testified that although the loss was excessive and the amount of loss stated in dollars and cents ran into large sums, it had not occurred to him to look into the matter except in a general way.

This was prior to much of the technical discussion of engineers, and was also prior to the evidence offered by the respondent that in estimating the average loss the entire business of both the Cataract and the General Electric

should be taken into consideration owing to the division of the general lighting load between them. Under the circumstances of the case the Commission is not convinced that this is the correct treatment of the matter. As before said, no two companies are exactly comparable upon the matter of loss of energy because of the circumstances being different; and the circumstances attending the operations of the Cataract company are so unusual that in our judgment it would be incorrect to consider its losses in connection with those of the General Electric.

It is exceedingly difficult to say, considering the circumstances under which it operates, what the unaccounted for loss of the respondent properly should be. There is no doubt, however, that it should be less than it is; and it seems best, under all of the circumstances of the case, to hold that these losses at present should not exceed about 28 or 29 per cent. of total energy purchased. This, however, should be regarded as merely tentative in any future consideration of the matter, and not a finding that a 28 or 29 per cent. loss is justified for all time to come. It should be taken as a reminder at this time to the company that its attention must be given actively to the subject, and at the expiration of the term for which the rates are fixed in this case, further attention will be given to the subject; and in the meantime probably both the Commission and the company itself will receive enlightenment upon the subject which will enable a more just conclusion to be reached.

The deduction to be made from operating expenses on this account, after calculating the reduced cost of energy, will amount to about \$16,000.

#### GENERAL SUMMARY AS TO FAIR VALUE OF PROPERTY IN SERVICE.

The discussion has now reached the point permitting the summation of the various matters relating to the fair value of the property in the service of the company. The following is a summary of the matters hereinbefore discussed:

INDE

Corrected value of fixed capital as per books of company.....	\$2,268,543.48
Deductions:	
Cost of land Genesee and Huron.....	\$117,725.95
Land not in public service.....	17,750.00
Land not in public service .....	11,250.00
	<hr/> 146,725.95
	<hr/> \$2,121,817.53
Add for value of land Genesee and Huron .....	150,000.00
	<hr/> \$2,271,817.53
Add on storage battery .....	\$12,501.00
Add deduction on conduits .....	8,079.65
Add general equipment .....	7,494.31
Add electrical laboratory equipment, etc.....	5,210.63
	<hr/> 33,285.59
	<hr/> \$2,305,103.12
New building Genesee and Huron streets.....	473,700.02
Capital orders in process 1912.....	78,717.40
Additions to capital 1912 .....	185,001.91
Working capital .....	100,000.00
Materials and supplies .....	51,637.45
	<hr/> \$3,194,159.90

The following is a corrected statement of the estimated operating expenses and taxes for the year 1911:

Operating expenses 1911 as reported by company.....	\$693,575.69
Deduct:	
Unaccounted for energy .....	\$16,000
Office rent .....	5,500
Cost of energy .....	89,410
	<hr/> 110,910.00
	<hr/> \$582,665.69
Add:	
Operating new building .....	\$24,000
Taxes .....	59,820
Contingencies .....	50,000
	<hr/> 133,820.00
	<hr/> \$716,485.69
Deduct assumed rents new building.....	35,000.00
	<hr/> \$681,485.69

The foregoing estimate requires but very little comment in addition to what has been heretofore made. We have added to the operating expenses contingencies amounting to \$50,000. This item is designed to cover a number of

matters of additional expense which will have to be incurred by the company beyond those which were actually incurred in 1911. The installation of a new schedule of rates will be a matter of very considerable expense. It will require a thorough canvass of all of the installations of customers. It will require a considerable temporary addition to the office force. It will require other matters unnecessary to be enumerated here, and it is only just that the company should be allowed the expense of the same. This item should, however, not be considered a permanent one and should be subject to future revision. Being an estimate, it may be too small; and again, it may be too large. There is no way of arriving at it accurately, but the Commission has endeavored to be liberal.

There are certain items of expenditure as reported in operating expenses for 1911 which should be reduced. The general administration expense is too large. Some of the promotion and advertising expenses should be cut out as being rendered unnecessary by the reduction of rates. The more attractive rates will attract customers. It would, however, be good business practice on the part of the company, and it is also its duty, to advertise by means of proper literature to the residents of the City the advantages of the new rate and just how they can increase the consumption of energy very largely in residences without incurring any additional expense over that heretofore paid. The public will not understand this without proper literature, and the way to disseminate it is by leaflets containing calculations showing just what can be done, which should be mailed to each customer and furnished to all prospective customers. These leaflets will be preserved by the customer for reference, and are infinitely superior to newspaper advertising in this respect.

A definite, well figured statement, which can be preserved by the prospective customer for future reference so as to compare with his bills, is what should be adopted. In view of the fact that the company should incur an expense of this character, it has been thought best not to cut from operating expenses certain matters which will be useless in the future and probably never should have been incurred.

Since the Commission, as is explained elsewhere, contemplates that the rates put in force at this time should be revised after a period, it will be wise for the company to go over its operating expenses carefully and prune out all unnecessary or excessive items.

The operating revenues for 1911 derived from the sale of energy were \$1,204,006.94. The operating expenses and taxes as above stated amount to \$681,485.65, leaving as gross income \$522,521.25. This justifies a reduction in the earnings from operation of 25 per cent., or \$301,001.73, leaving for returns upon investment \$221,519.52. The company in 1911 had an operating revenue of \$9,132.26 from other sources than the sale of energy, which, added to the foregoing returns from the sale of energy, would make a total return on investment of \$230,651.78.

#### BUFFALO AND NIAGARA FALLS ELECTRIC LIGHT AND POWER COMPANY.

In connection with the subject of returns on investment, both the public and the stockholders of the respondent should be fully advised of the results accruing to the company and the stockholders by reason of the ownership of the capital stock of the Buffalo and Niagara Falls Electric Light and Power Company. As hereinbefore stated, all of the stock of this company, which will be termed the Niagara Falls company, is owned by the respondent. To acquire this stock it issued \$614,000 of its own stock, and therefore in declaring stock dividends there necessarily went to the owners of this stock, amounting to \$614,000, dividend stock to the amount of \$205,700: assuming the amount of dividends to be \$935,000 as stated by the company in its report to this Commission. The report of the examiner shows the amount of such stock dividends to have been \$934,775. The difference of \$225 is too inconsequential to demand investigation as to how it arises. The respondent therefore has outstanding of stock chargeable to this investment \$819,700. It also issued on the original purchase of the Niagara Falls company's stock, bonds to the amount of \$200,000. It has been declaring upon the stock a 6 per cent. dividend and paying

upon the bonds interest at the rate of 5 per cent. The following is a tabular statement of the amount which it pays by reason of the investment:

Original issue .....	\$614,000	6% dividend	\$36,840
Dividend stock .....	205,700	6% "	12,342
<hr/>			
Total stock outstanding .....	\$819,700	dividends	\$49,182
Bonds .....	200,000	5% interest	10,000
<hr/>			
TOTAL .....	\$1,019,700	TOTAL PAYMENTS	\$59,182

The Niagara Falls company's stock originally purchased was \$500,000. This company has declared a stock dividend of \$100,000, so that the stock now held amounts to \$600,000. This paid in 1911 a 6 per cent. dividend, or \$36,000.

The apparent net loss annually is therefore \$23,182.

The foregoing calculation does not take into account the ownership of a portion of the respondent's stock by the Niagara Falls company. itself. The effect of such ownership upon this calculation may be of interest to the mathematically inclined but it is not necessary for any purpose of this case.

The respondent is both a holding and an operating company. The foregoing figures show that as an operating company it has stock outstanding to the amount of \$2,904,300, and bonds to the amount of \$2,988,000: making a total of stock and bonds of \$5,892,300.

#### FIXING THE RATE SCHEDULE.

However difficult it may be, the task of determining the fair value of the property of the respondent in service, and the average amount of reduction which should be made in the rate, is simple and easy as compared with adjusting the rate itself. The subject of an equitable rate for an electric light and power company is one which is but very little understood, although it has received an enormous amount of consideration and discussion. The elements necessary to be taken into consideration are so diverse, the difficulties in the way of ascertaining the facts are so great, the theory of the rate is so unsettled, and the difficulties of applying



even an approximately correct theory in actual practice are so complex and varied, that the installation of a rate which would be admitted by everyone to be perfect has never yet been accomplished.

The public generally is prone to believe that the proper rate for electric energy delivered is a fixed price for a given unit, precisely the same as it would be for a bushel of wheat. Nothing could be further from the truth than this. It has come to be generally recognized, however, that there is a distinction between the lighting rate and the power rate which may properly be recognized in practice. Why there is a difference is not ordinarily known, and although a minimum rate is perfectly just and equitable, the ordinary consumer is entirely unable to grasp the reason, and generally considers it an effort on the part of the company to get something out of him for which it has not delivered anything.

In this case the reduction of rate might be accomplished either by a horizontal reduction of the maximum rate from 9 cents to some lesser sum, or by a percentage reduction upon the existing schedule. Either of these methods would work the grossest injustice to consumers. This fact is very properly recognized by the corporation counsel, who says in his brief:

That the rate should not be fixed by applying a flat or percentage reduction to the rates now charged by the electric company, is so plain as not to require argument.

The truth of this statement is recognized by the respondent, and the Commission has accordingly in the interests of justice and equity been forced to the creation of an entirely new rate schedule. The existing schedule of the company it is not necessary to analyze to the utmost extent for the purpose of pointing out its inequalities and defects. Some of them will be adverted to later.

It is probably best, in view of this situation of the public mind, for the Commission to avail itself of the opportunity to state some of the elementary principles upon which the building of a correct rate depends. The discussion will not

be for the benefit or advantage of those who have studied the subject, but an attempt will be made to set forth in plain and non-technical language those principles which are universally recognized, it is believed, by those who have made a competent study of the subject and which must be followed, so far as practicable, in producing a rate which reasonably approximates justice as between the different consumers. No excuse is needed for this elementary treatment of the subject at this time. It must be regarded as an effort to bring before the mind of the public, as well as before corporations subject to the jurisdiction of the Commission which have not investigated the matter, a few principles which must govern electric rates.

An easy comprehension of any subject of this character is assisted by the use of graphic charts or diagrams.

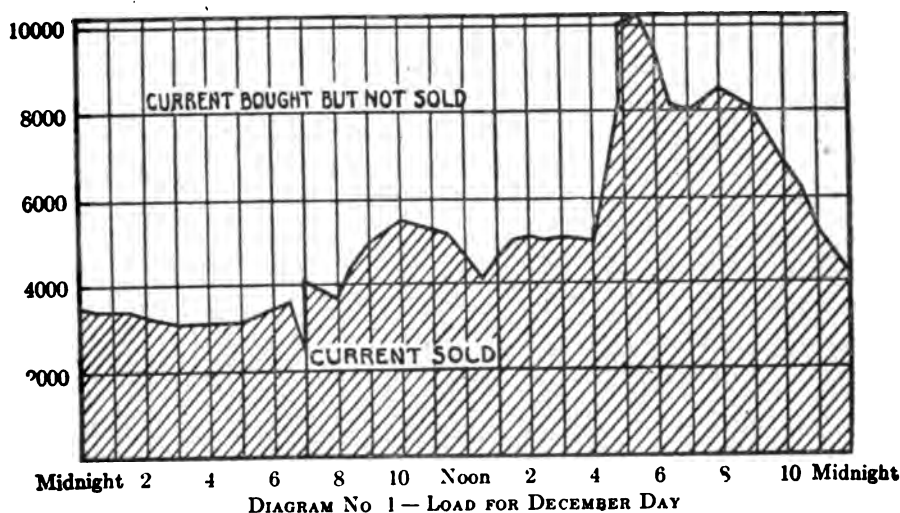


Diagram No. 1 is a representation of the load and load curve of the respondent, Buffalo General Electric Company, on a given day in the month of December, 1912. The company purchases electric energy from The Cataract Power and Conduit Company and pays for it upon what is known as the peak of the load: that is to say, the greatest amount of current taken by it at any one time during twenty-four hours is taken as the amount of demand for current for the entire twenty-four hours. The figures at the bottom of the

diagram represent hours, showing the twenty-four hours of the given day. The figures at the left of the diagram represent kilowatts, and show that between 5 and 6 o'clock in the afternoon of the given day the company was taking a little in excess of 10,000 kilowatts of energy. It therefore paid for this amount at the agreed price. It was entitled to receive that amount of energy during the entire twenty-four hours without any additional consideration. As a matter of fact, however, it sold only that energy to its customers which is shown in the shaded portion of the diagram. That portion of the diagram which is white or unshaded shows the amount of energy which it might have sold if it could have found a customer for it, without increasing in the slightest degree the price which it paid for energy.

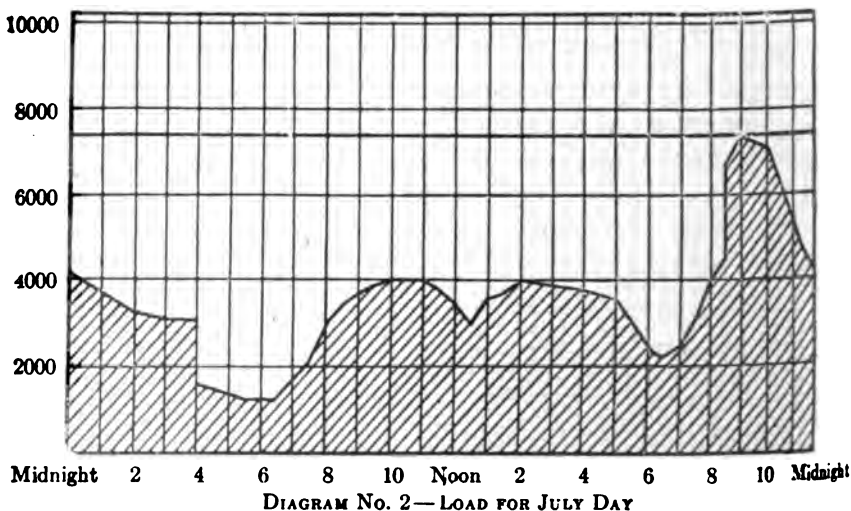


Diagram No. 2 shows the same facts for a day in July. That day something less than 8,000 kilowatts was taken by the respondent at what is known as the peak of the load, and therefore it had to pay for nearly 8,000 kilowatts and would have been entitled to that amount of energy during the twenty-four hours. It was able to sell, however, only that amount of energy which is shown in the shaded portion of the diagram and did not sell that portion which is unshaded.

The foregoing explanation relates to the sale of energy only. The same principle applies to the investment in the plant of the company. Referring to the first diagram, the company was obliged to have a plant adequate to distribute among its customers 10,000 kilowatts of energy, and yet during a greater part of the day a portion of this capacity was not called into use nor required to perform the full duty for which it was capable. All of the return for the use of the plant to which the company was entitled for that day would, of course, have to be spread upon the energy sold and which is represented by the shaded portion of the diagram. If that expense could have been distributed upon the entire area of the diagram, on the shaded and unshaded portions alike, the price would necessarily be considerably reduced to each consumer.

These considerations bring into view the fact that the time during which energy is taken by the consumer is of the utmost importance. If he takes it at what is known as the peak of the load, that is to say, at the time when the demand is the greatest, the results to the company are greatly different from what they are if he takes it at some other time. Account should be taken of this fact in the making of any rate schedule. The results of this important fact should be clearly stated, and some of them are as follows: they are stated in numbered paragraphs for ease of reference:

1. The cost of current to the company is fixed, not by the amount used but by the greatest amount taken at any period during twenty-four hours or by the peak of the load.

2. The capacity of the plant is determined by the greatest amount of energy required by the consumers at any point of time in the year, and hence the cost of the plant or investment required in the business is determined by the peak of the load during the year.

3. Every consumer demanding service at the peak of the load during a given twenty-four hours adds to the cost of current for that day.

4. A consumer who takes current off the peak of the load adds nothing to the cost of the current to the company.

5. A consumer who takes no current at the yearly peak of the load adds nothing to the capacity or cost of the plant.

6. The consumer who adds to the cost of the plant by taking current at the yearly peak should equitably be required to pay a return of some amount upon the investment which has been made necessary solely by reason of his demand for service. This justifies a minimum charge of some amount.

7. If all customers were on the yearly peak, equity would require that since all must in some manner pay a given return to the company, each should pay that proportion of the whole which his demand bears to the total demand.

8. But the customers are not all on the daily or current peak nor the yearly or plant peak. Hence a method must be devised which will fairly distribute the plant cost of yearly peak between those who are on the peak and those who are not.

9. Every customer should pay all expenses which are incurred solely because he is a customer.

10. As to the daily or current peak, it would not be equitable to require only those who are on that peak to pay all the cost, although it is their demand which determines the amount to be paid by the company for current, since that would result in freeing those who take current off the peak from paying anything. Hence there must be some method devised of making an equitable distribution of cost of current between the various consumers.

11. The burden falls primarily on those who are on the peak on both cases because they are the ones who primarily create all the expense. Hence in order to relieve them, the first thing requiring attention is to create as large a demand off the peak as possible, thus creating a greater number to assist in bearing the necessary expense.

12. The peak both daily and yearly is created chiefly by the lighting load. The power load is largely off peak. Hence it is for the interest of those using current for light to encourage the use of off the peak power as much as possible.

13. In order to encourage this use of off the peak power a price must be fixed which will induce customers to take it. The price should be such as to pay a just sum for the current used and take off if possible some portion of the current cost from the peak load user. It should also be such as to contribute to some extent to the yearly investment cost.

14. In fixing power costs the company is compelled to take into consideration competitive costs or it can not get the business.

15. It must also fix the price at such a point as will induce if possible new uses for power.

16. It must also encourage a more extensive use by off the peak consumers.

17. Generally speaking, all lighting is on the peak, hence the basis to work from is the lighting rate.

18. Consumers of current for light should be induced to use current for power out of lighting hours. This will benefit the consumer and company if the rate is equitably adjusted. This can chiefly be done in residences. The field in stores, saloons, restaurants, churches, offices, and the like does not appear promising for much expansion.

19. The primary or lighting rate should be as low as possible in order to attract new customers in a town in which the business is not thoroughly developed.

20. The primary rate should cover only the peak load hours and should drop as rapidly as may be to induce longer hours of consumption and thus give a greater sum to spread the investment charge upon.

Consumers can readily be divided into classes in accordance with the time of service with reference to the peak of the load. Three diagrams have been prepared showing typical consumption.

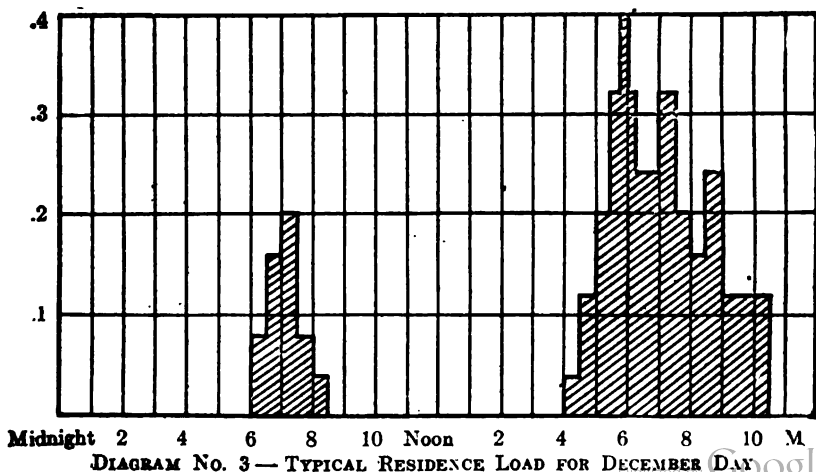


DIAGRAM NO. 3 — TYPICAL RESIDENCE LOAD FOR DECEMBER DAY



Diagram No. 3 is a theoretical showing of the current consumed in an ordinary residence. There is some consumption early in the morning between the hours of 6 and 8, and the greater amount of consumption is at night from 4 o'clock until 11 o'clock, and varies at different times of the period. The shaded portion represents the current consumed and the white portion the current unconsumed during the twenty-four hours. The diagram itself is upon the same theory, showing in the base figures the hours of the day and in the vertical figures the kilowatts taken. It is plain on looking at the diagram in connection with the foregoing statement of principles that anything which will induce the use of current at noon and midnight will be of advantage to the company, and by a proper arrangement of the rates it need not add measurably to the expense to the consumer. Thus, in a residence, the lighting in the evening is something which will take place every day. It ought to be possible to extend the use of current in that residence for power purposes during daylight hours at a small cost to the consumer.

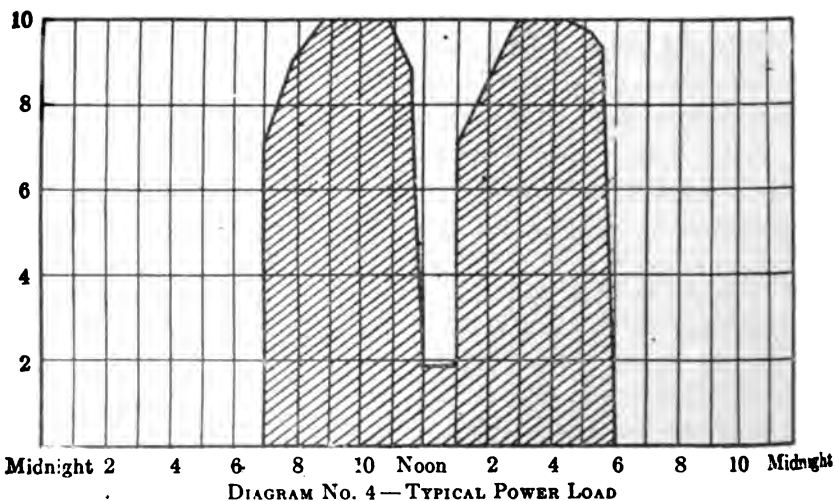


Diagram No. 4 is prepared upon the same plan, and is a typical representation of the current taken by a machine shop for small power load. The demand for current is assumed to commence at 7 o'clock in the morning, continue substantially until noon, shut down very largely during the noon hour, and then the current is taken again until 6 o'clock at night. By comparing the peak of this diagram with the peak of Diagram No. 1 it will be seen that the

load is very largely off from the peak of No. 1, and this is an explanation why power can be afforded more cheaply than light, a greater portion of which is upon the peak.

Comparing Diagram No. 4 with Diagram No. 2, which represents a summer month when the peak is later in the day it will be seen that none of the power is upon the peak.

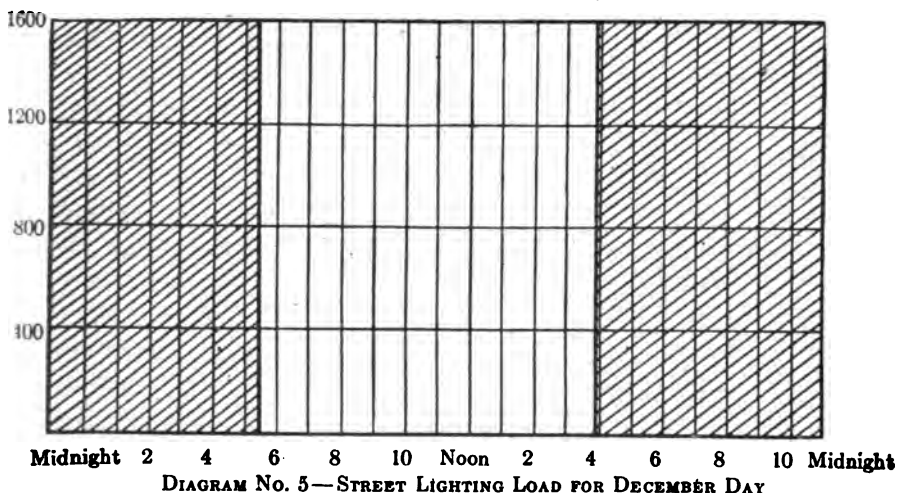


Diagram No. 5 is a typical representation of the consumption of current by street lights. Street lights, as shown by the diagram, extend from midnight until a little after 6 o'clock in the morning, begin again at 5 o'clock in the afternoon and continue until midnight; so a great portion of current is off peak during the summer months, while a much greater portion is on peak during the winter months.

The principle to be deduced from all of this is that the consumer should pay a greater price for the current taken during the peak load than that taken off the peak load, and the difficulty in the case is to ascertain what portion of the current a given consumer takes is on peak load and what is off. No instrument has yet been devised which will record this fact, and accordingly we must trust to observation for the reaching of the proper conclusion. Lighting, as is well known, is very largely on peak. The existence of the lighting is what creates the peak. Power is on the peak very much less than lighting. The power consumer takes a very much larger percentage of energy off peak than the lighting consumer does.





Another difficulty is in ascertaining the maximum demand of the consumer: that is, the greatest amount of current which he takes at any given moment during the twenty-four hours. Meters have been constructed which will determine this fact, but they are too expensive for ordinary use. They are practical, however, in the case of very large consumption for power. Accordingly, it is essential to ascertain in some practical, although it may be to some extent an arbitrary method, the general average amount of demand of the consumer during the peak load hours. Experience has settled this to some extent. It must be stated, however, that further investigation is very greatly required upon this point. When once the consumer has paid the proper sum for the current which he has consumed during the peak of the load, the company can well afford to make a very considerable reduction in price in order to induce him to extend the consumption during the hours off from peak, and the reduction in price will be of great benefit especially in residences. Electric energy ought to be applied to very many power uses in every residence, where it is now used in but few. Motors for driving sewing machines and washing machines, electric fans, vacuum cleaners, electric flatirons and cooking utensils, should be common, where they are now rare; and if the price could be made right their introduction would inevitably follow. For this reason a sliding scale in residences is imperative. The consumer should pay the equitable price for what he takes on peak, and therefore it will be for his advantage and for the advantage of the company to take current which costs the company nothing, that is out of the unshaded portion of the diagram, at a very low rate.

All of these considerations enforce the necessity of a differential scale of some sort. Different devices or scales have been adopted in different places, all of which were designed to accomplish the results herein indicated. It is not intended at this time to go into a discussion of the technical matters of consumer charge, demand charge, and others well known to electrical experts, nor to discuss or analyze the various schemes which have been presented to effect these results. Attention may well be called, however, to the fact that the Hydro-Electric Commission of the Province of

Ontario has established a scheme by which every consumer is required to pay a certain sum whether he takes current or not, upon the basis of the area lighted: that is, the size of the rooms in which his lighting apparatus is installed; and then he is charged a very much less than usual rate for current alone that is used. The consumer very speedily discovers that upon this basis of charge he can consume much more current without any extra charge than he was accustomed to consume under what may be termed the flat rate charge of so much per kilowatt-hour.

In preparing for an adjustment of the rates in this case, the parties were called upon for their suggestions. The respondent submitted a statement, carefully prepared by its principal expert, which has been studied with care. In that statement it is proposed to divide the consumers into four classes: residence lighting, general lighting, general power, and large light and power. In addition to these there would be also street lighting. This general classification is a very good one, and is accordingly approved. It is a rough but reasonable treatment of the different conditions under which the energy is taken and the different demands made by the consumer upon the company. It has accordingly been adopted as the basis of the rate to be fixed.

The division of consumers, however, into classes of this character raises questions which should not be overlooked in the adjustment. It is obvious that numerous questions will arise as to the class in which a given consumer should be placed. The two principal classes are (a) stores and business places using energy for both lighting and power, and (b) consumers using from one meter for both residence and general lighting.

Other questions arise of greater or less difficulty when the consumer has been allocated to one of the general classes. Some of these are as follows: (a) where current is supplied to one plant but the company for its own reasons supplies two meters for measuring the same; (b) where current is supplied to substantially one plant but parts thereof are located in different portions of the city; (c) where the customer has meters in disconnected properties; (d) where one meter serves different tenants in one building, and the landlord furnishes the light to the tenant and reimburses himself in the rent; (e) the customer having a meter in

the house and one in barn or garage situate on the same premises.

It is clear that in none of these cases should the Commission at this time attempt to fix the rule applicable to each case. The proper procedure is for the company to assemble all of these cases which have been found in experience to give trouble, propose rules for handling them, and submit such rules to the Commission for approval. These matters then can be worked out in the light of the experience of the company with all of the cases before the Commission at the same time, and can be made the subject of a supplemental order establishing the rule.

#### SPECIAL SERVICE.

There is a class of service the receipts from which in the year 1911 amounted to approximately \$79,000, which has not thus far been considered. It is what is known sometimes as special and feature service. This class takes into consideration special contracts and special situations which can not well be considered under the general heads hereinbefore laid down. A very considerable part of this service involves something out of the usual and hence it is impossible to lay down in advance precise and formal rules determining the rate to be charged. To a certain extent there must be some flexibility in this matter, provided such flexibility does not lead to unreasonable discrimination. The company should be required to cover these matters in its schedule of rates so far as possible, such schedule to be approved by the Commission. There is a question as to where some service should apply, whether in this class or in another. Some of the classes of service referred to are (a) breakdown service, (b) elevator service, (c) sign service, (d) special occasions, (e) matters not otherwise covered.

These matters should also be considered by the company and by the City, and be the subject of a further and supplemental order.

#### STREET LIGHTING.

The evidence regarding street lighting is in very unsatisfactory condition, and this probably is owing to the multitude of details involved in the case. It is undoubtedly

the case that counsel have simply found themselves swamped by the number of matters requiring their attention and that the details as to street lighting have not been worked out with that care and attention which would enable the Commission to reach a satisfactory conclusion regarding the same.

An illustration of the difficulties the Commission has had to contend with, not only in this matter but in many others throughout the case, is shown by the following: One witness for the City made the claim that a very considerable saving could be effected by the use of magnetite lamps instead of enclosed arcs for street lighting. His evidence was reviewed by a witness for the company, who arrived at very different results. The interesting point is that the evidence by the company witness, as disclosed in respondent's exhibit No. 16, places the value of enclosed arc lamps at \$14 each, and the calculations are made upon that basis. As hereinbefore shown, the value of arc lamps fixed by another company witness for the general purposes of the case is \$29.49; and the amount paid the manufacturer is assumed to be \$21.70. This is a typical case of the different figures used by both parties in different branches of the case, and these differences have given rise to infinite confusion and trouble in handling the details.

At present the City seems to be paying \$56 per annum for enclosed arcs served from overhead lines and from a part of the conduits, and \$75 per annum for some served from a portion of the conduits. Just why there should be a distinction made in lamps served from conduits does not appear; nor does it appear why the difference is \$19 per lamp. The City, however, seems to recognize that there is a sufficient reason for the difference. At page 131 of its brief it proposes the following as the rate for municipal arc lighting:

For municipal arc lighting for lamps supplied through underground conduits \$65 per lamp per year; for lamps supplied through overhead lines \$46 per lamp per year.

The contract in 1906, under which the parties are now operating, as above indicated, does not treat all lamps supplied through underground conduits alike. Apparently,

3395, as of December 31, 1911, were on the \$56 rate, and 323 were on the \$75 rate. Under these circumstances, the best that can be done is to recognize that the distinction obtaining in the contract of 1906 is proper because the City has agreed to it.

As to the price per lamp, we have not found ourselves able to agree with the City. An estimate has been made of the amount of the investment in the arc lighting system, the expenses attendant upon its operation concerning which, outside of current, there is no evidence in the case, and all of the other matters which would seem to make up a proper and reasonable price for arc lighting; and it does not appear as the result of these calculations that the price should be reduced more than 10 per cent. from the existing figures. The classification of the source of supply should be that which is found in the contract of 1906, and an approximate reduction of 10 per cent. would make in round numbers a price of \$50 and \$69 respectively.

There is some incandescent street lighting, for which the amount paid in the year 1911 is reported by the company as being \$5,497.33. We discover no figures in the case showing indisputably how many incandescent lamps there are in service, except such as may be obtained from the annual reports of the company which have been put in evidence. At page 315 of the annual report for 1911, the company reports 465 incandescent lamps in service in street lighting, of 50-candle-power, and that the price per lamp per year is \$7.50: 465 lamps at \$7.50 per year would produce \$3,487.50, which is short of the reported amount \$2,010.17. At page 219 of the annual report for the same year the company reports 465 multiple incandescent lamps in service at commercial lighting, each consuming 40 watts per lamp, with 32-candle-power. The coincidence of the same number of lamps, 465, in each class, awakens suspicion that the figures are not compiled with that accuracy which is desirable for the decision of a disputed question. These incandescent lamps burn about 4,000 hours a year, as we take it. This would require about five renewals a year. Whether the lamps belong to the City or belong to

the company does not appear. The report of the examiner does not show any of these incandescent lamps in the inventory of property, nor does the inventory of the company mention any such lamps, so far as we can find. If the company owns the lamps and cares for them, \$7.50 is not an excessive price, as nearly as we can guess what the lamps are. Considering all the facts, a portion of which has been detailed, there seems to be no reason whatever for changing the price paid by the City for incandescent street lighting, and that should remain as before. If there is any substantial injustice done by this, the matter can be hereafter adjusted.

#### **THE RATE.**

The following are the maximum rates fixed by the Commission for the various classes of service enumerated:

##### ***Residence Lighting:***

Available for residence consumers only.

Connected lighting load in kilowatts to be determined by actual inspection.

Maximum demand to be assumed to be one-quarter of connected load.

Net rate: 7 cents per kilowatt-hour for first 60 hours use of maximum demand; 4 cents per kilowatt-hour for next 120 hours use of maximum demand;  $1\frac{1}{2}$  cents per kilowatt-hour for remainder.

##### ***General Lighting:***

Available for all lighting except residences.

Connected load in kilowatts to be determined by actual inspection.

Maximum demand to be assumed to be one-half of connected load.

Net rate: 7 cents per kilowatt-hour for first 60 hours use of maximum demand; 4 cents per kilowatt-hour for next 120 hours use of maximum demand;  $1\frac{1}{2}$  cents per kilowatt-hour for remainder.

##### ***General Power:***

Available to all power customers.

Connected load in kilowatts to be determined by actual inspection.

Maximum demand to be assumed to be three-quarters of connected load.

Net rate: 7 cents per kilowatt-hour for first 30 hours use of maximum demand;  $3\frac{1}{2}$  cents per kilowatt-hour for next 40 hours use of maximum demand; 1 cent per kilowatt-hour for remainder.

All bills in above classes to be made out with net rates as above, for payment within ten days of date of bill; and with gross rate using 8 cents per kilowatt-hour for primary rate, such gross rate to be subject to discount to net rate if paid within ten days from date of bill.

*Large Light and Power:*

Available for all consumers willing to guarantee a maximum demand of 10 kilowatts.

Maximum demand determined by maximum demand meter.

Net rate, Demand Charge: \$2.75 per kilowatt for first 10 kilowatts demand; \$1.50 per kilowatt for each additional kilowatt demand.

Energy Charge: 1 cent per kilowatt-hour for all energy used.

Gross rate, Demand Charge: \$3 per kilowatt for first 10 kilowatts demand; \$1.75 per kilowatt for each additional kilowatt demand.

Energy Charge: 1 cent per kilowatt-hour for all energy used.

*Street Lighting: Arc Lamps:*

Direct current system operating on not less than 6.6 amperes with 70 to 75 volts at lamp terminals and magnetite lamps of the type now in use, \$50 per year except as herein after specified.

All lamps of either of above types ordered or required after the 1st day of March, 1907, to be supplied by any underground wires, and specified in the contract between the City of Buffalo and Buffalo General Electric Company dated the 14th day of May, 1906, for which the company was to receive and to be paid at the rate of \$75 per annum, \$69 per annum.

*Street Lighting: Incandescent:*

At the rates now prevailing and now charged by Buffalo

General Electric Company to the City of Buffalo for such service.

The following table shows the revenue derived by the respondent from each class of service affected in the year 1911, the amount of reduction, the percentage of reduction, and the amount of revenue which would have been produced had the rates been in effect for that year:

CLASS	1911 REVENUE	REDUCTION		REVENUE AS REDUCED
		AMOUNT	PER CENT	
Residence lighting .....	\$127,000	\$42,000	33.0	\$85,000
General lighting .....	474,000	133,000	28.0	341,000
General power .....	95,000	31,000	32.7	64,000
Large light and power.....	214,000	71,000	33.2	143,000
	<u>\$910,000</u>	<u>\$277,000</u>	....	<u>\$633,000</u>
Street lighting: Arcs \$50 and \$69, Nos. 3606 and 323 .....	215,000	24,000	11.0	191,000
GRAND TOTAL .....	\$1,125,000	\$301,000	26.7	\$824,000

The calculations for the foregoing table were made from data showing the residence business for 1911 classified between flats and houses, and showing the number of customers, the kilowatt-hour consumption, and the revenue for each month; also the average size of installation for flats and houses. That for general lighting was from data furnished by the company, showing business for specified months classified according to hours use of connected load by hours, and showing the kilowatt-hour consumption and the revenue for each class. The same is true of the power business. The calculations were made upon data furnished by the company, and which data were used by the expert for the company in submitting his calculations for a rate to the Commission. The rate for street lighting was reached by computing the actual cost to the company with a proper return upon the amount of property used in the business and upon the expense incurred for operation.

These rates as fixed by the Commission comply as nearly as it is possible to make them with the requirements hereinbefore discussed. The proper data as to connected load necessary for putting in force this rate should be assembled by the company at once. It is understood that a large part of it has already been gathered. All questions arising in



the course of establishing the rate and practice should be submitted by the company to the Commission for final determination when the questions are once ascertained.

### **MINIMUM RATE.**

The company is at liberty under this schedule to establish a minimum rate. It would be better if the Commission felt at liberty so to do, but there is sufficient uncertainty in the law as to its power in this respect to make it advisable to remit the matter to the determination of the company, subject to the following observations:

The minimum rate should be a yearly minimum and not a monthly minimum. The proper proportion should be charged monthly, however, and an adjustment made at the end of the year. It is a serious question whether the minimum rate should not depend upon the size of the installation. The minimum rate for residences should not exceed \$9 per year for the smallest class of customers. The question as to large installations is held open for further consideration.

### **EXISTING RATE.**

The existing rate schedules of the company, as hereinbefore indicated, are imperfect and discriminatory by reason of the fact that they are what is known as the step rate. Under such a rate it always follows, that with every break in the price a customer near the maximum limit of his class pays more than one who is near the minimum limit of the next class. This always creates dissatisfaction and trouble and should always be avoided. Another criticism upon this rate is that it does not break from the maximum soon enough. All residence lighting under the company's schedule was entitled to lower rates for larger quantities, but the change in quantity occurred after so many hours use that it was testified that no residence in Buffalo obtained the benefit of it, and all paid the maximum rate. We understand that this is not true as to one residence, but that fact is wholly immaterial. There is no theory by which the maximum can be held for so long a period of time as in the existing rate with regard to the actual cost to the company. Nomi-

nally, lighting consumers were paying 9 cents as a maximum. Owing to the minimum charge in force upon monthly bills, however, the actual average rate to lighting consumers has been nearer 10 cents than 9 cents.

#### GENERAL COMMENTS.

A considerable misapprehension as to the force and effect of the decision in this case may arise unless some general observations are made.

1. The maximum rate fixed in this case can not properly be used as a criterion for a proper maximum rate in any other place or in any other controversy. It is clear that a maximum rate depends upon the character of the load as well as the quantity: that is to say, the load factor is an element; and necessarily, the time of consumption. A business which is all upon the peak demands a higher maximum than a business which is spread out over long hours. A rate suitable for one place may be entirely unsuited to another unless the conditions of the load are practically the same.

2. The Commission has not attempted to fix any definite percentage of return upon the capital invested. It has used for illustrations and for some calculations the rate of 6 per cent. The truth is, no one can tell what return a given rate will produce either in the aggregate or as a percentage upon some other sum. The returns can only be ascertained by experience. All that can be determined in such a case as this is that the rate is not confiscatory: that is to say, it will return at least 6 per cent. upon the ascertained fair value of the property used in the public service. There is no such thing as keeping the return, however, at 6 per cent. The conditions will vary from year to year. Operating expenses will vary; gross earnings will vary; and in a town which is not thoroughly developed, as Buffalo is not, a rate should be so fixed as to increase the return to the company by increasing its revenues above the limit fixed without a proportional increase in expenses. This, it is believed, is precisely what will happen in the case of the Buffalo General Electric Company. There has been a very considerable growth in its business during the last two or three years. There should be a

very much larger growth during the next two or three years, and this will introduce into the problem new complications.

3. The complications just referred to are that the business of the company ought to increase, and this will demand the investment of fresh capital. The company must be left in a situation that will enable it to finance its growth properly and upon reasonable terms. It is now serving the public and must continue to serve the public. The problem concerning electric energy generated at Niagara Falls is very great. It involves elements which are now insoluble. The amount of energy available and to be available for the next ten years from this source is unknown. As has been indicated in the case, there is a grave possibility that steam power will have to be resorted to for the supply of electric current in the near future in the City of Buffalo. If such is the case, that fact may demand an entire revision of the rates herein fixed, not only in case a steam plant is erected, but also in case its erection is contemplated, for the reason that a very considerable further investigation may be needed to determine whether the rates fixed would be remunerative with a steam plant producing part of the energy consumed. The calculations in this case, elaborate as they have been, relate to hydro-electric energy as against steam generated energy, and no calculations have been made which warrant any conclusions as to the cost of energy partly derived from water generation and partly from steam generation.

All of the foregoing considerations have been kept in mind in the determination of this case. The subject under consideration has been so vast in extent; the factors to be considered are so complex, involved, and in many respects contradictory and uncertain, that the Commission can not feel sure that errors have not crept into its calculations and that its conclusions may not be to some extent erroneous in matters of detail.

## APPENDIX.

The diagrams on the following pages show graphically the average rates for kilowatt-hour for various hours use of maximum demand, for each of the proposed rates.

A simple illustration will explain the use of these diagrams. Suppose a residence customer has installed a total capacity in lamps of 1,000 watts (= 1 kilowatt). Then his maximum demand would, in accordance with the proposed residence lighting rate, be one-quarter of 1,000 watts = 250 watts, or  $\frac{1}{4}$  kilowatt. Suppose, further, that the consumption of current for a given month as shown by the meter is 50 kilowatt-hours. Then the hours use of the maximum demand is  $50 \div \frac{1}{4} = 200$ . (By hours use is meant the number of hours which would be required, when using current at a rate equal to the maximum demand, in order to consume an amount of energy equal to that which was actually consumed. The hours use is, therefore, equal to the consumption in kilowatt-hours divided by the maximum demand in kilowatts.)

The bill would be computed as follows:

60x1/4=15 kilowatt-hours	at 7¢	= \$1.05
120x1/4=30 kilowatt-hours	at 4¢	= 1.20
Remainder 5 kilowatt-hours	at 1½¢	= .08
<hr/>		<hr/>
Total	50 kilowatt-hours	= \$2.33

Average rate =  $2.33 \div 50 = 4.66\text{¢}$  per kilowatt-hour.

By inspection of Diagram No. 6, it will be seen that the rate corresponding to 200 hours use of maximum demand is 4.66 cents, just as calculated above. The function of these diagrams is merely to show at a glance the results which would otherwise have to be laboriously figured out.

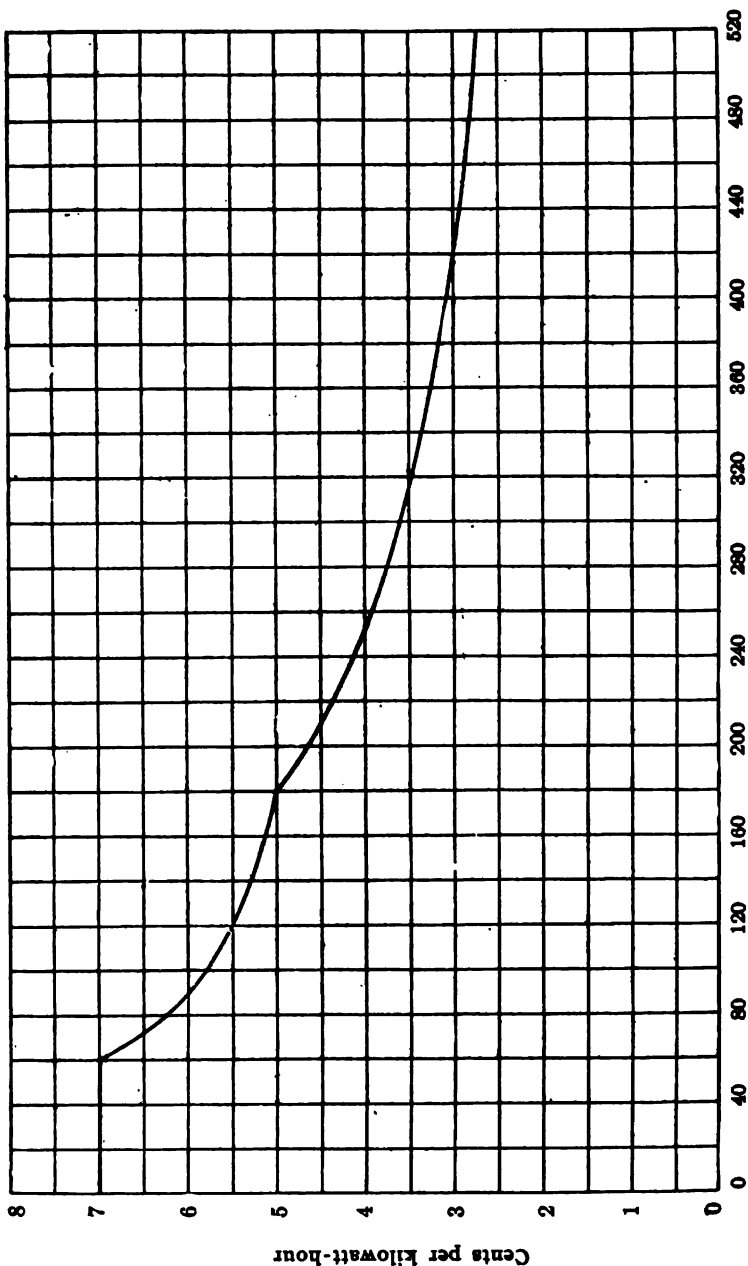
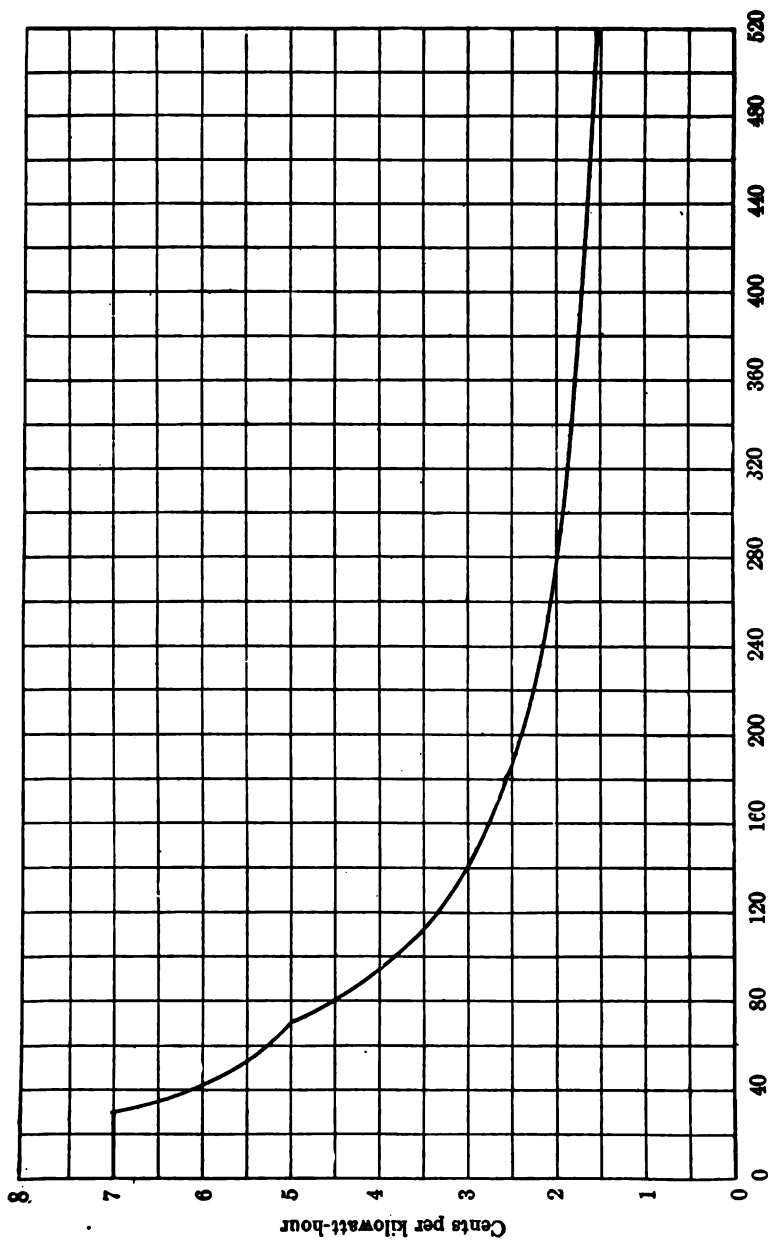


Diagram No. 6—Residence and General Lighting



Hours use per month of maximum demand  
Diagram No. 7—General Power

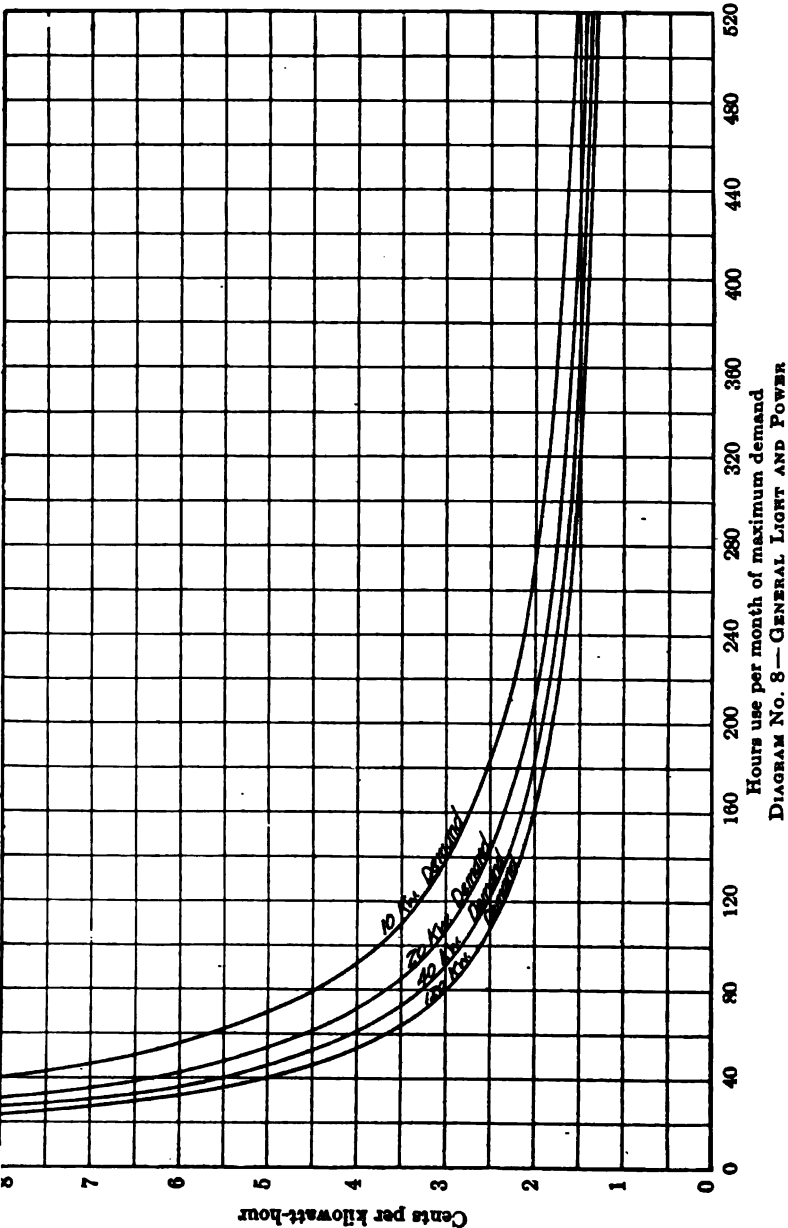


DIAGRAM NO. 8—GENERAL LIGHT AND POWER

## ORDER.

On the 8th day of November, 1911, Louis P. Fuhrmann, as Mayor of the City of Buffalo, pursuant to the provisions of section 71 of the Public Service Commissions Law, filed a complaint in writing with this Commission alleging that the rates and prices charged by the Buffalo General Electric Company for electricity sold and delivered in the City of Buffalo are unjust and unreasonable, and praying that this Commission investigate such allegations and fix a maximum price to be charged by the said Buffalo General Electric Company for electricity to be hereafter supplied to said City and its inhabitants.

The Commission thereupon caused a copy of such complaint to be served upon said Buffalo General Electric Company in the manner required by statute and by its rules of procedure and the said Buffalo General Electric Company thereafter duly served an answer in such proceeding denying that its rates and prices charged for electricity are either unjust or unreasonable.

Thereafter evidence was given both by the complainant and by the respondent concerning the matters thus placed in issue, and full hearing has been had thereon. Both parties have submitted briefs and the evidence and arguments of both have been fully considered by this Commission.

The Commission finds as matter of fact, after such hearings and after full consideration of the subject, that the rates and prices charged by the respondent, Buffalo General Electric Company, for electricity are unjust and unreasonable. It further finds that the schedule of rates used by said company is in its form unjustly discriminatory, and unduly preferential. It further finds that the maximum price to be charged by said company in order to be non-discriminatory and non-preferential should be fixed upon a sliding scale with maximum prices for the various amounts of electricity furnished to customers thereunder.

In determining the price to be charged for electricity by the said Buffalo General Electric Company, the Commission has duly considered all of the facts which have been brought to its attention by either party and has exercised a due re-

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gard, among other things, for a reasonable average return upon capital actually expended by the said Buffalo General Electric Company, and the necessity of making reservations out of income for surplus and contingencies.

*Now, therefore, ordered,* (1) That the rates and prices charged by the Buffalo General Electric Company for electricity within the City of Buffalo are unjust and unreasonable and that the said rates and prices so charged by it are too great and that the schedule of said rates and prices is unjustly discriminatory and unduly preferential in its actual working.

*Ordered,* (2) That the just and reasonable maximum prices for electricity to be charged by the said Buffalo General Electric Company for various classes of service to be furnished by it in the City of Buffalo are as follows:

#### RESIDENCE LIGHTING.

Available for residence consumers only.

Connected lighting load in kilowatts to be determined by actual inspection.

Maximum demand to be assumed to be one-quarter of connected load.

#### NET RATE.

7¢ per kilowatt-hour for first 60 hours use of maximum demand.

4¢ per kilowatt-hour for next 120 hours use of maximum demand.

1½¢ per kilowatt-hour for remainder.

#### GENERAL LIGHTING.

Available for all lighting except residences.

Connected load in kilowatts to be determined by actual inspection.

Maximum demand to be assumed to be one-half of connected load.

#### NET RATE.

7¢ per kilowatt-hour for first 60 hours use of maximum demand.

4¢ per kilowatt-hour for next 120 hours use of maximum demand.

1½¢ per kilowatt-hour for remainder.

#### GENERAL POWER.

Available to all power customers.

Connected load in kilowatts to be determined by actual inspection.

Maximum demand to be assumed to be three-quarters of connected load

#### NET RATE.

7¢ per kilowatt-hour for first 30 hours use of maximum demand.

3½¢ per kilowatt-hour for next 40 hours use of maximum demand.

1¢ per kilowatt-hour remainder.

All bills in above classes to be made out with net rates as above, for payment within ten days of date of bill, and with gross rate using eight cents per kilowatt-hour for primary rate, such gross rate to be subject to discount to net rate if paid within ten days from date of bill.

#### **LARGE LIGHT AND POWER.**

Available for all consumers willing to guarantee a maximum demand of 10 kilowatts.

Maximum demand determined by maximum demand meter.

##### **NET RATE.**

Demand Charge:

\$2.75 per kilowatt for first 10 kilowatts demand.

\$1.50 per kilowatt for each additional kilowatt demand.

Energy Charge:

1¢ per kilowatt-hour for all energy used.

##### **GROSS RATE.**

Demand Charge:

\$3.00 per kilowatt for first 10 kilowatts demand.

\$1.75 per kilowatt for each additional kilowatt demand.

Energy Charge:

1¢ per kilowatt-hour for all energy used.

#### **STREET LIGHTING: ARC LAMPS.**

Direct current system operating on not less than 6.06 amperes with 70 to 75 volts at lamp terminals and magnetite lamps of the type now in use, \$50 per year except as hereinafter specified.

All lamps of either of above types ordered or required after the first day of March, 1907, to be supplied by any underground wires, and specified in the contract between the City of Buffalo and the Buffalo General Electric Company dated the 14th day of May, 1906, for which the company was to receive and to be paid at the rate of \$75 per annum, \$69 per annum.

#### **STREET LIGHTING: INCANDESCENT.**

At the rates now prevailing and now charged by the Buffalo General Electric Company to the City of Buffalo for such service.

#### **SPECIAL AND FEATURE LIGHTING.**

Rates for this class of service as defined in the opinion of the Commission herein to be not greater than the rates heretofore charged by the Buffalo General Electric Company, the company to file on or before the first day of May, 1913, a schedule of such rates for the consideration and approval of the Commission.

*Ordered*, (3) That the prices and rates hereinbefore fixed shall be the maximum price to be charged by the said Buffalo General Electric Company for electricity in the City of Buffalo for a period of two years from May 1, 1913, and thereafter as required by statute, until this Commission shall

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of its own motion or upon the complaint of any corporation, person or municipality interested, fix a higher or lower maximum price for electricity to be thereafter charged.

*Ordered*, (4) That the rates herein fixed shall apply to all bills for electricity sold and delivered solely after May 1, 1913, but shall not apply to bills for electricity in part sold and delivered prior to May 1, 1913, provided, however, that such bills shall not include any electricity sold after May 15, 1913.

*Ordered*, (5) That on or before the 28th day of April, 1913, the said Buffalo General Electric Company submit to this Commission proposed general rules for determining within which class of consumers a given consumer is to be placed in case the circumstances are such that there is a question as to in which class he will belong under the general division herein stated; also a statement containing proposed general rules for determining whether a consumer having two or more meters should be charged upon the basis of each meter separately or upon the basis of two or more meters, all as indicated in the opinion of the Commission herein.

*Ordered*, (6) That on or before the 21st day of April, 1913, the said Buffalo General Electric Company notify this Commission in the manner provided by section 23 of the Public Service Commission Law whether the terms of this order are accepted and will be obeyed.

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IN THE MATTER OF THE COMPLAINT OF LOUIS P. FUHRMANN  
AS MAYOR OF THE CITY OF BUFFALO AGAINST THE CAT-  
ARACT POWER AND CONDUIT COMPANY.

*Decided April 2, 1913.*

**ORDER.\***

On the 8th day of November, 1911, Louis P. Fuhrmann as Mayor of the City of Buffalo, pursuant to the provisions of section 71 of the Public Service Commissions Law, filed a complaint in writing with this Commission alleging that the

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\*The Opinion in this case is printed at page 1015 of this Leaflet.—Ed

rates and prices charged by The Cataract Power and Conduit Company for electricity sold and delivered in the City of Buffalo are unjust and unreasonable, and praying that this Commission investigate such allegations and fix the maximum price to be charged by the said The Cataract Power and Conduit Company for electricity to be hereafter supplied to said City and its inhabitants.

The Commission thereupon caused a copy of such complaint to be served upon said The Cataract Power and Conduit Company in the manner required by statute and by its rules of procedure, and the said The Cataract Power and Conduit Company thereafter duly served an answer in said proceeding denying that its rates and prices charged for electricity are either unjust or unreasonable.

Thereafter evidence was given both by the complainant and by the respondent concerning the matters thus placed in issue, and full hearing has been had thereon. Both parties have submitted briefs and the evidence and arguments of both have been fully considered by this Commission.

The Commission finds as matter of fact, after such hearings and after full consideration of the subject, that the rates and prices charged by the respondent, The Cataract Power and Conduit Company, are unjust and unreasonable. It finds as matter of fact that the prices charged by said respondent are fixed upon what is known as a sliding scale and that the method in which said prices are adjusted by said sliding scale is not unjustly discriminatory nor unduly preferential, and that the basis upon which its schedule of rates is adjusted should be maintained with a reduction of the maximum price to be charged by the company for the various classes of service set forth in the said schedule of rates established and observed by the company.

In determining the price to be charged for electricity by the said The Cataract Power and Conduit Company, the Commission has duly considered all of the facts which have been brought to its attention by either party and has exercised a due regard, among other things, for a reasonable average return upon capital actually expended by the said The Cataract Power and Conduit Company and to the necessity of making reservations out of income for surplus and contingencies.

*Now, therefore, ordered,* (1) That the rates and prices charged by The Cataract Power and Conduit Company for electricity within the City of Buffalo, are unjust and unreasonable in that the said prices and rates so charged by it are too great.

*Ordered,* (2) That the just and reasonable maximum prices for electricity to be charged by the said The Cataract Power and Conduit Company for the various classes of service to be furnished by it in the City of Buffalo are the rates now charged and collected by it for such electricity less 28 per cent. thereof, except in the case of the electricity furnished to the International Railway Company under its contracts with said company, and that as to the prices charged to the said International Railway Company under and pursuant to said contracts, this Commission does not change nor alter the said rates or prices in any respect whatsoever.

*Ordered,* (3) That the just and reasonable maximum prices of electricity to be hereafter charged by The Cataract Power and Conduit Company in the City of Buffalo, except as to said International Railway Company, are as follows:

#### POWER RATES.

##### SLIDING SCALE APPLIED TO 10 HOUR CONSUMERS.

Service charge for maximum power called for per month, \$0.72 per unit or kilowatt.

##### ADDITIONAL CHARGE BY METER.

	PER UNIT.
For 1,000 units or less per month.....	\$0.0144
For excess over 1,000 up to 2,000 units inclusive .....	.0108
For excess over 2,000 up to 3,000 units inclusive .....	.00864
For excess over 3,000 up to 5,000 units inclusive .....	.0072
For excess over 5,000 up to 10,000 units inclusive .....	.00576
For excess over 10,000 up to 20,000 units inclusive .....	.0054
For excess over 20,000 up to 40,000 units inclusive .....	.00504
For excess over 40,000 up to 80,000 units inclusive .....	.004752
For excess over 80,000 .....	.004608

# FUHRMANN vs. THE CATARACT POWER & CONDUIT CO. 1177

## RATES FOR BLOCK POWER APPLIED TO 24 HOUR CONSUMERS.

MAXIMUM E. H. P.	COST PER ANNUM.
50	\$1,440
100	2,592
200	4,680
300	6,480
500	9,900
1000	19,800
5000	90,000

## FLAT KILOWATT-HOUR RATE APPLIED TO INTERMITTENT SERVICE. LARGE INSTALLATIONS.

\$0.018 per kilowatt-hour.

### SMALL INSTALLATIONS.

Sliding scale from \$0.0432 to \$0.0144 per kilowatt-hour.

## LIGHTING RATES.

### RESIDENCE LIGHTING.

Available for residence consumers only.

Connected lighting load in kilowatts by inspection.

Maximum demand one-quarter of connected load.

### NET RATE.

7¢ per kilowatt-hour for first 60 hours use of maximum demand.

4¢ per kilowatt-hour for next 120 hours use of maximum demand.

1½¢ per kilowatt-hour for remainder.

### GENERAL LIGHTING.

Available for all lighting except residences.

Connected load in kilowatts by inspection.

Maximum demand one-half of connected load.

### NET RATE.

7¢ per kilowatt-hour for first 60 hours use of maximum demand.

4¢ per kilowatt-hour for next 120 hours use of maximum demand.

1½¢ per kilowatt-hour for remainder.

*Ordered, (4) That for any other classes of service furnished by the said The Cataract Power and Conduit Company not included in the above prices and for which it maintains a schedule, the rate shall be that now charged by said company less 28 per cent. thereof, the foregoing, however, being the form of all schedules of rates and prices reported to this Commission by the said company.*

*Ordered*, (5) That the prices and rates herein fixed shall be the maximum price to be charged by said The Cataract Power and Conduit Company for electricity in the City of Buffalo for a period of two years from May 1, 1913, and thereafter until this Commission shall upon its own motion or upon the complaint of any corporation, person or municipality interested, fix a higher or lower maximum price of electricity to be thereafter charged.

*Ordered*, (6) That the rates herein fixed shall apply to all bills for electricity sold and delivered solely after May 1, 1913, but shall not apply to bills for electricity in part sold and delivered prior to May 1, 1913, provided, however, that such bills shall not include any electricity sold after May 15, 1913.

*Ordered*, (7) That on or before the 21st day of April, 1913, the said The Cataract Power and Conduit Company notify this Commission in the manner ~~provided by~~ section 23 of the Public Service Commissions Law whether the terms of this order are accepted and will be obeyed.







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